

# U.S. Customs and Border Protection



## 19 CFR PART 177

### REVOCAION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A FISHING WADER WITH BOOTS

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of a fishing wader with boots.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a fishing wader with boots under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 33, on August 16, 2017. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** Grace A. Kim, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–7941.

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 51, No. 33, on August 16, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of a fishing wader with boots. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N276141, dated June 29, 2016, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N276141, CBP classified a fishing wader with boots in heading 6405, HTSUS, specifically in subheading 6405.20.90, HTSUS, which provides for “[o]ther footwear: With uppers of textile materials:

Other.” CBP has reviewed NY N276141 and has determined the ruling letter to be in error. It is now CBP’s position that a fishing wader with boots is properly classified, by operation of GRIs 1 and 6, in heading 6404, HTSUS, specifically in subheading 6404.20.60, HTSUS, which provides for “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of leather or composition leather: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N276141 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H285612, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: September 29, 2017

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H285612

September 29, 2017

CLA-2 OT:RR:CTF:TCM H285612 GaK

CATEGORY: Classification

TARIFF NO: 6404.20.60

MS. JIN PARK

PRO LINE MANUFACTURING COMPANY

186 PARISH DRIVE

WAYNE, NJ 07470

RE: Revocation of NY N276141; Classification of footwear from China

DEAR MS. PARK:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N276141, which was issued to Pro Line Manufacturing Company on June 29, 2016. In NY N276141, CBP classified a fishing wader with boots (“merchandise”) under subheading 6405.20.90, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “[o]ther footwear: With uppers of textile materials: Other.” We have reviewed NY N276141 and found it to be incorrect. For the reasons set forth below, we are revoking this ruling.

On August 16, 2017, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin Vol. 51, No. 33. No comments were received in response to this notice.

**FACTS:**

In NY N276141, the merchandise was described as follows:

The submitted sample, identified as style # 9301-BLK, is a man’s chest high fishing wader complete with boots attached. The upper of style 9301-BLK includes textile suspenders, a plastic buckle closure, neoprene material laminated with nylon jersey on the external surface, and rubber/plastic (boot component). The constituent material of the upper is considered to be textile. The outer soles are rubber/plastics with a thin layer of leather on the external surface. The wader is “protective” against water. You provided an F.O.B. value over \$12.40.

**ISSUE:**

Whether the merchandise is classified as “[o]ther footwear,” under heading 6405, HTSUS, or as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials,” under heading 6404, HTSUS.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (“GRIs”) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS subheadings at issue are as follows:

6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:
6404.20	Footwear with outer soles of leather or composition leather: Not over 50 percent by weight of rubber or plastics and not over 50 percent by weight of textile materials and rubber or plastics with at least 10 percent by weight being rubber or plastics:
6404.20.40	Valued over \$2.50/pair.
6404.20.60	Other.
	* * *
6405	Other footwear:
6405.20	With uppers of textile materials:
6405.20.90	Other.

Note 4 to Chapter 64, HTSUS states:

4. Subject to note 3 to this chapter:

- (a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;
- (b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

The original ruling request included a test report from an independent laboratory that tested the percentage of the outer sole covered by composition leather material in contact with the ground while walking: 72.3% by composition leather and 27.7% by rubber. In accordance with Note 4(b) to Chapter 64, HTSUS, the constituent material of the outer sole is composition leather, and therefore, it is more specifically described by the terms of heading 6404, HTSUS, pursuant to GRI 1.

In Headquarters Ruling Letter (“HQ”) 082614, dated October 17, 1988, CBP interpreted subheading 6404.20.40, HTSUS, to be “...limited to footwear with fabric uppers and leather or composition leather soles which are under 10 percent by weight of rubber and plastics or not over 50 percent by weight of textile materials, rubber and plastics.” In doing so, CBP noted that this interpretation was also consistent with the provisions contained in the Tariff Schedule of the United States, the predecessor to the HTSUS, which provided for footwear “which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics.” The merchandise is mostly made of rubber/plastics and textile components, and therefore it cannot be classified

under subheading 6404.20.40, HTSUS. Accordingly, the merchandise is properly classified under subheading 6404.20.90, HTSUS.

Therefore, we find that under GRIs 1 and 6, the fishing wader with boots are described by subheading 6404.20.90, HTSUS, which provides for “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of leather or composition leather: Other.”

**HOLDING:**

Under the authority of GRIs 1 and 6, the fishing wader with boots are provided for in heading 6404, HTSUS, specifically in subheading 6404.20.90, HTSUS, which provides for, “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of leather or composition leather: Other.” The 2017 column one general rate of duty is 37.5% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY N276141, dated June 29, 2016, is hereby REVOKED.

*Sincerely,*

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
ELIGIBILITY OF AUTOMOTIVE BUMPERS FOR A DUTY  
EXEMPTION UNDER SUBHEADING 9802.00.50 HTSUS**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed revocation of one ruling letter and proposed revocation of any treatment relating to the eligibility of automotive bumpers for a duty exemption under 9802.00.50 of the Harmonized Tariff Schedule of the United States (HTSUS).

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of automotive bumpers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Valuation & Special Programs Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Tebsy Paul, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade, at (202) 325–0195.

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the eligibility of automotive bumpers for a duty exemption under subheading 9802.00.50 of the HTSUS. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) 284970, dated April 26, 2017 (Attachment A), this notice covers any

rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY 284970, CBP classified automotive bumpers in heading 9802, HTSUS, specifically in subheading 9802.00.50, HTSUS, which provides for other articles returned to the United States after having been exported for repairs or alterations. CBP has reviewed NY 284970 and has determined the ruling letter to be in error. The painting process in Canada is an intermediate processing operation, not processing of a finished good. It is now CBP's position that automotive bumpers are not eligible for duty free treatment under subheading 9802.00.50, HTSUS, which provides for other articles returned to the United States after having been exported for repairs or alterations.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY 284970 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H288285, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: September 5, 2017

MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments



## [ATTACHMENT A]

April 26, 2017  
CLA-2-98:OT:RR:NC:N1:106  
CATEGORY: Classification  
TARIFF NO.: 9802.00.50

JASMINE MOSS  
CUSTOMS COORDINATOR  
A.G SIMPSON (USA) INC.  
6640 STERLING DRIVE SOUTH  
STERLING HEIGHTS, MI 48312-5845

RE: The applicability of subheading 9802.00.50 to automotive bumpers from the United States

DEAR Ms. MOSS,

In your letter dated April, 2017, you requested a ruling on whether automotive bumpers were eligible for duty-free treatment under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

The items concerned are automotive bumpers for General Motors (GM) or Chrysler. You state in your request that A.G Simpson USA Inc. purchases steel blanks from U.S. steel processors, and stamps the steel into bumper shells at the Sterling Heights location. These bumper shells are then shipped to a sister plant in Canada where they are painted various colors. After the bumpers are painted, they return to the Sterling Heights Facility where they are then assembled (by adding sensors, fog lamps, fasteners, brackets, electrical harnesses, step pads and end caps) into finished bumpers. The finished bumpers are then sent to your GM or Chrysler customers in the United States to be incorporated into their vehicle assembly. You inquire as to whether the bumper shells returning to the U.S. from Canada after undergoing the described painting process will qualify for a partial duty exemption so that your company need only pay duty on the value of the painting process. Subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), provides for articles returned to the United States after having been exported for repairs or alterations not covered under a warranty. As the duty rate would be based on the North American Free Trade Agreement (NAFTA) rate for the finished good from Canada, and that rate is Free, if the bumper shells qualify for classification in subheading 9802.00.50, HTSUS, it would enter from Canada duty free.

Subheading 9802.00.50, HTSUS, provides a full or partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by means of repairs or alterations, not pursuant to a warranty. Articles returned to the United States after having been repaired or altered in Canada, may be eligible for a duty exemption under this provision, i.e., the articles are subject to duty upon the value of the repairs or alterations using the applicable rate under the NAFTA. In order to receive this preferential duty treatment, the importer must ensure that the documentary requirements of section 181.64, CBP Regulations, (19 C.F.R. § 181.64), are satisfied.

Section 181.64(a) states, in pertinent part, “ ‘repairs or alterations’ means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other

treatment which does not destroy the essential character of, or create a new and commercially different good from, the good exported from the United States.”

Classification under subheading 9802.00.50, HTSUS, is precluded where: (1) the exported articles are not complete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. *See* *Guardian Indus. Corp. v. United States*, 3 Ct. Int'l Trade 9 (1982), and *Dolliff & Co., Inc., v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff'd*, 66 C.C.P.A. 77, C.A.D. 1225, 599 F.2d 1015 (1979).

You state that the bumper shells will be further combined with sensors, fog lamps, fasteners, brackets, electrical harnesses, step pads, and end caps after being reimported from Canada. According to the automotive industry, bumpers may be sold with or without the above-mentioned components. Thus, it is the opinion of this office that the bumper shells in their imported condition are complete articles of commerce. Furthermore, the painting operation in Canada does not transform the bumpers in name, use, performance characteristics or tariff classification.

Consideration of all of these factors leads to the conclusion that the bumpers are complete articles upon exportation to Canada, and that the painting operation constitutes an alteration within the meaning of subheading 9802.00.50, HTSUS. Therefore, the bumpers may be entered under this tariff provision with a duty only upon the value of the painting alteration operation, upon compliance with the documentary and regulatory requirements of section 181.64, Customs Regulations (19 CFR 181.64).

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Liana Alvarez at [liana.alvarez@cbp.dhs.gov](mailto:liana.alvarez@cbp.dhs.gov).

*Sincerely,*

STEVEN A. MACK  
*Director*

*National Commodity Specialist Division*

[ATTACHMENT B]

HQ H288285  
CLA-2 OT:RR:CTF:VS H288285 TP  
CATEGORY: CLASSIFICATION  
TARIFF NO.: 9802.00.50

JASMINE MOSS  
CUSTOMS COORDINATOR  
A.G. SIMPSON USA INC.  
6640 STERLING DRIVE SOUTH  
STERLING HEIGHTS, MI 48312-5845

RE: Revocation of NY 284970; Subheading 9802.00.50, HTSUS; Automotive bumpers from the United States

DEAR Ms. MOSS:

This is in reference to New York Ruling Letter (“NY”) 284970, dated April 26, 2017. At issue was the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (“HTSUS”), to automotive bumpers painted in Canada. In NY 284970, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that painting the automotive bumpers in Canada was a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. It is now our position that such painting of automotive bumpers is not a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. For the reasons described in this ruling, we hereby revoke NY 284970.

**FACTS:**

NY 284970 stated, in relevant part, that A.G. Simpson purchases steel blanks from U.S. steel processors and stamps these steel blanks into bumper shells in the United States. These bumper shells are then shipped to a sister plant in Canada where they are painted various colors. After the bumpers are painted, they are returned to the United States where they are assembled into finished bumpers by adding sensors, fog lights, fasteners, brackets, electrical harnesses, step pads and end caps. CBP held that the bumpers are eligible for duty-free treatment under subheading 9802.00.50, HTSUS, because the bumpers are complete articles upon exportation to Canada and the painting operation did not transform the bumpers in name, use, performance, characteristics or tariff classification.

**ISSUE:**

Whether the automotive bumpers exported to Canada for the described painting process will qualify for subheading 9802.00.50, HTSUS treatment?

**LAW AND ANALYSIS:**

Subheading 9802.00.50, HTSUS, provides a full or partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the United States after having been repaired or altered in Canada, whether or not pursuant to warranty, may be eligible for duty free treatment, provided the documentary requirements of section 181.64, CBP Regulations, (19 C.F.R. § 181.64), are satisfied. Section 181.64(a) states, in pertinent part:

‘Repairs or alterations’ means restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential character of, or create a new and commercially different good from, the good exported from the United States.

Section 181.64(b), CBP Regulations, (19 C.F.R. § 181.64(b)) states:

*Goods not eligible for duty-free or reduced-duty treatment after repair or alteration.* The duty-free or reduced-duty treatment referred to in paragraph (a) of this section shall not apply to goods which, in their condition as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of the finished goods.

Classification under subheading 9802.00.50, HTSUS, is precluded where: (1) the exported articles are not complete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. See *Guardian Indus. Corp. v. United States*, 3 Ct. Int’l Trade 9 (1982), and *Dolliff & Co., Inc., v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff’d*, 66 C.C.P.A. 77, C.A.D. 1225, 599 F.2d 1015 (1979).

In *Dolliff & Company, Inc.*, the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as greige goods for heat setting, chemical scouring, dyeing and treating with chemicals, were eligible for the partial duty exemption under item 806.20, TSUS, when returned to the United States. The court found that the processing steps performed on the exported greige goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated that:

...repairs or alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles.

Conversely, in *Amity Fabrics, Inc. v. United States*, C.D. 2104, 43 Cust. Ct. 64 (1959), “pumpkin” colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of a precursor provision to subheading 9802.00.50, HTSUS.

As such, CBP has previously held that initial painting processes do not qualify for the duty exemption under subheading 9802.00.50, HTSUS. In H278563, dated November 23, 2016, aluminum coils were exported to Canada to undergo a paint coating process. The aluminum coils were then reimported into the United States to be further processed by cutting to size and flattening to create their end use as ceiling panels. CBP concluded that the painting process in Canada, was a step in the production process of the coil. Therefore, the painting processing in Canada is a necessary step in the production of a finished good and the aluminum coils did not qualify for subheading 9802.00.50, HTSUS treatment.

After reviewing the above-referenced cases, we find that painting the automotive bumpers in Canada does not constitute a repair or alteration under 9802.00.50, HTSUS. The painting process is an intermediate processing operation. *See Dolliff & Company, Inc. v. United States*, 599 F.2d 1015 (1979). This is not a repainting operation as contemplated by the redyeing in *Amity Fabrics* and as noted in 19 C.F.R. § 181.64(a), permitting redyeing but not dyeing. In the present case, painting the automotive bumpers is a continuation of the production process to be fit for its intended purpose. Furthermore, the operations performed in the United States are not relevant as to whether the painting, as performed in *Amity Fabrics*, is acceptable. The standard is not whether the bumpers were transformed in name, use, performance, characteristics or tariff classification in Canada, but rather whether the exported products are complete for their intended purpose. Here, painting the bumpers prevents them from rusting; therefore, the bumpers are not ready for their intended purpose upon exportation to Canada. As the painting procedure in Canada is not processing of a finished good, the automotive bumpers exported to Canada for painting do not qualify for subheading 9802.00.50, HTSUS, treatment.

**HOLDING:**

NY 284970 is revoked to reflect that the painting of automotive bumpers as described above does not constitute an alteration; therefore, the bumpers are not eligible for duty free treatment under subheading 9802.00.50, HTSUS.

**EFFECT ON OTHER RULINGS:**

NY 284970, dated April 26, 2017, is hereby REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

*Sincerely,*  
 MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF ONE RULING LETTER AND  
 REVOCATION OF TREATMENT RELATING TO THE  
 TARIFF CLASSIFICATION OF GLASS SLEEVES FOR  
 DIODES**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security

**ACTION:** Notice of proposed revocation of one ruling letter, and revocation of treatment relating to the tariff classification of glass sleeves for diodes

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises inter-

ested parties that U.S. Customs and Border Protection (CBP) intends to revoke Headquarters Ruling Letter (HQ) 087044, dated May 21, 1990, concerning the tariff classification of glass sleeves for diodes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325-0024.

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information neces-

sary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of glass sleeves for diodes. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (HQ) 087044, dated May 21, 1990 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 087044, CBP classified glass "sleeves" for diodes in heading 7011, HTSUS, specifically in subheading 7011.90.00, HTSUS, which provides for "Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like: Other." CBP has reviewed HQ 087044 and has determined the ruling letter to be in error. It is now CBP's position that the subject glass sleeves for diodes are properly classified, by operation of GRI 1, in heading 7002, HTSUS, specifically in subheading 7002.39.00, HTSUS, which provides for "Glass in balls (other than microspheres) of Heading 7018; rods or tubes, unworked: Tubes: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ 087044 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H253027, set forth as Attachment B to this notice. Additionally, pur-

suant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: October 13, 2017

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments



[ATTACHMENT A]

HQ 087044  
May 21, 1990  
CLA-2 CO:R:C:G 087044 JMH  
CATEGORY: Classification  
TARIFF NO.: 7011.90.00

MR. NIC WILDEBOER  
GENERAL MANAGER-NEW MARKETS DEVELOPMENT  
SCHOTT ELECTRONICS, INC.  
42 SILVERMINE ROAD  
SEYMOUR, CT 06483

RE: Glass sleeves for diodes

DEAR MR. WILDEBOER:

Your request for a classification ruling under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”) for certain glass sleeves to be used with diodes has been referred to this office for a reply.

**FACTS:**

The articles in questions are glass sleeves used as housings for diodes. The glass sleeves are imported from West Germany by Schott Electronics.

The dimensions of the sleeves will vary depending upon the type of diode to be housed. You state that O.D.’s run between .200” down to .060”. I.D.’s run from .130” down to .033”, with lengths running from .200” down to .060”. You also state that the material used would be Schott’s numbers 8541 or 8532 glass.

You assert that Schott’s customers will insert loose diode assemblies into the sleeves. The sleeves are then heated until they partially melt and fuse around the loose diode assemblies. The pieces are then cooled to room temperature. The glass sleeve provides each diode with structural strength and electrical integrity.

**ISSUE:**

Whether the glass sleeves are parts of the diodes so to be classified within heading 8541, HTSUSA.

**LAW AND ANALYSIS:**

The classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI’s). GRI 1, HTSUSA, states in part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes...and...according to the following provisions...”

You believe that the glass sleeves should be classified within heading 8541. This heading describes the following:

- 8541 Diodes, transistors and similar semiconductor devices...whether or not assembled in modules or made up into panels...parts thereof..
- 8541.90.00 Parts...

This heading is within Section XVI, Chapter 85, HTSUSA. According to GRI 1, both the Section and Chapter notes must be examined. You state that Chapter 85, Note 5, HTSUSA, requires that heading 8541 takes precedence over any other heading for the classification of diodes. This assertion is correct. However, the glass sleeves are not diodes, but are only parts of diodes.

Section XVI, Note 2, HTSUSA, addresses the classification procedure for parts of the articles within the Chapter 85 headings. Section XVI, Note 2(b), HTSUSA, states:

...parts of machines...are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
- (c) All other parts are to be classified in heading 8485 or 8548.

Section XVI, Note 5, HTSUSA provides that “machine” is “any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85.”

The glass sleeves cannot be classified under Section XVI, Note 2(a), HTSUSA, since they are not covered by any other headings of Chapters 84 or 85. The sleeves are principally or solely used with diodes, under Section XVI, Note 2(b), HTSUSA. Thus they are classifiable within heading 8541. However, in order to be classified within chapter 85, they must not be excluded from classification by Chapter 85, Note 1, HTSUSA.

Chapter 85, Note 1(b), HTSUSA, excludes from classification within Chapter 85 “[a]rticles of glass of heading 7011...” Heading 7011, HTSUSA, describes “[g]lass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like...” To determine what is meant by “or the like” of this heading, the Explanatory Notes to the HTSUSA must be examined. The Explanatory Notes, although not dispositive, are to be looked to for the proper interpretation of the HTSUSA. 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Explanatory Note 70.11(A), Harmonized Commodity Description and Coding System (“HCDCS”) states that heading 7011 covers glass envelopes used for the manufacture of electric lamps, X-ray tubes, radio valves, cathode-ray tubes, rectifier valves and other electronic tubes or valves. Explanatory Note 70.11, HCDCS, Vol. 3, p. 935. Through a manufacturing process, these glass products are made into the items of Chapter 85.

It is the opinion of this office that the glass sleeves in question are glass envelopes within the meaning of heading 7011. They are, therefore, excluded from classification within Chapter 85. The appropriate classification for the glass sleeves is within subheading 7011.90.00, HTSUSA, as “[g]lass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like...[o]ther...”

**HOLDING:**

The glass sleeves to be used with diodes are parts of diodes, in accordance with Section XVI, Note 2(b), HTSUSA. However, the sleeves are excluded from classification in Chapter 85 by Chapter 85, Note 1(b), HTSUSA, since the glass sleeves are glass articles under heading 7011, HTSUSA.

The proper classification for the glass sleeves in subheading 7011.90.00, HTSUSA, as “[g]lass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like...[o]ther...”

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

## [ATTACHMENT B]

HQ H253027  
 CLA-2 OT:RR:CTF:CPM H253027 CkG  
 CATEGORY: Classification  
 TARIFF NO: 7002.39.00

JAMES PURCELL  
 INTERNATIONAL TRADE COMPLIANCE MANAGER,  
 CORPORATE OFFICE EMPOWERED OFFICIAL  
 SCHOTT NORTH AMERICA, INC.  
 400 YORK AVENUE,  
 DURYEA PA, 18642

RE: Reconsideration of HQ087044; classification of glass sleeves for diodes

DEAR MR. PURCELL:

This letter is in regards to Headquarters Ruling Letter (HQ) 087044, which was issued to Schott Electronics, Inc., on May 21, 1990. In HQ 087044, CBP classified glass sleeves for diodes in heading 7011 of the Harmonized Tariff Schedule of the United States (HTSUS), as glass envelopes for electric lamps, cathode-ray tubes and the like. For the reasons set forth below, we have determined that the classification of the glass sleeve enclosures for diodes in heading 7011, HTSUS, was incorrect; it is now our position that they are classified in heading 7002, HTSUS.

**FACTS:**

In HQ087044, CBP described the subject articles as follows:

The articles in questions are glass sleeves used as housings for diodes. The glass sleeves are imported from West Germany by Schott Electronics.

The dimensions of the sleeves will vary depending upon the type of diode to be housed. You state that O.D.'s run between .200" down to .060". I.D.'s run from .130" down to .033", with lengths running from .200" down to .060". You also state that the material used would be Schott's numbers 8541<sup>1</sup> or 8532 glass. You assert that Schott's customers will insert loose diode assemblies into the sleeves. The sleeves are then heated until they partially melt and fuse around the loose diode assemblies. The pieces are then cooled to room temperature. The glass sleeve provides each diode with structural strength and electrical integrity.

The product specifications for Schott type 8531 and 8532 glass state that both types are soft, sodium-free glass with a high lead content. The coefficient of mean linear thermal expansion (at a temperature of 20°C) of 9.1 for type 8531 and 8.7 for type 8532, and  $10^{-6}\text{K}^{-1}$  for both types at a temperature of 300°C.

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<sup>1</sup> Although CBP stated in HQ 087044 that the type of glass used would be Schott's numbers 8541 and 8532, we note that Schott's submission referred only to Schott's types 8531 and 8532 glass, not 8541. We therefore proceed with the assumption that the types of glass used in the instant glass sleeves is Schott's types 8531 and 8532.

**ISSUE:**

Whether the instant articles are classified as parts of diodes in heading 8541, HTSUS; as glass envelopes for electric lamps, cathode-ray tubes or the like in heading 7011, HTSUS; or as unworked glass tubes of heading 7002, HTSUS.

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7002:	Glass in balls (other than microspheres) of Heading 7018; rods or tubes, unworked:				
	Tubes:				
7002.32.00:	Of other glass having a liner coefficient of expansion not exceeding $5 \times 10^{-6}$ per Kelvin within a temperature range of 0° C to 300° C...				
7002.39.00:	Other...	*	*	*	*
7011:	Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like:				
7011.90.00:	Other...	*	*	*	*
8541:	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes: mounted piezoelectric crystals; parts thereof:				
8541.90.00:	Parts...	*	*	*	*

Note 2 to Section XVI provides as follows:

2. Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 9431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading

8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

- (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

Note 1(b) to Chapter 85 provides as follows:

- (1) This chapter does not cover:  
 (b) articles of glass of Heading 7011;

Note 9 to Chapter 85 provides, in pertinent part, as follows:

9. For the purposes of headings 8541 and 8542:  
 (a) “*Diodes, transistors and similar semiconductor devices*” are semiconductor devices the operation of which depends on variations in resistivity on the application of an electric field;

...

For the classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function.

\* \* \* \*

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 7002, HTSUS, provides, in pertinent part, as follows: This heading covers:

...

- (2) Glass rods and tubing of various diameters, which are generally obtained by drawing (combined with blowing in the case of tubing); they may be used for many purposes (e.g., for chemical or industrial apparatus; in the textile industry; for further manufacture into thermometers, ampoules, electric or electronic bulbs and valves, or ornaments). Certain tubes for fluorescent lighting (used mainly for advertising purposes) are drawn with partitions running through the length.

This group includes “enamel” glass, in bars, rods or tubes (“enamel” glass is defined in the Explanatory Note to heading 70.01).

Balls of this heading must be unworked; similarly rod and tubing must be unworked (i.e., as obtained direct from the drawing process or merely cut into lengths the ends of which may have been simply smoothed).

The heading **excludes** balls, rod and tubing made into finished articles or parts of finished articles recognisable as such; these are classified under

the appropriate heading (e.g., **heading 70.11, 70.17 or 70.18, or Chapter 90**). If worked, but not recognisable as being intended for a particular purpose, they fall in **heading 70.20**.

This heading includes tubes (whether or not cut to length) of glass which has had fluorescent material added to it in the mass. On the other hand, tubes coated inside with fluorescent material, whether or not otherwise worked, are **excluded (heading 70.11)**.

EN 70.11 provides as follows:

This heading covers:

- (A) All open glass envelopes (including bulbs and tubes) of any shape or size, **without fittings**, for the manufacture of electric lamps, valves and tubes, whether these are for illuminating or other purposes (incandescent or vapour discharge lamps, X-ray tubes, radio valves, cathode-ray tubes, rectifier valves or other electronic tubes or valves, infra-red lamps, etc.). Most of these envelopes are mass-produced by automatic machines; they may be frosted, coloured, opal, metallised, coated with fluorescent material, etc.  
Glass parts of envelopes (such as face-plates or cones of cathode-ray tubes for television receivers, spotlight bulb reflectors) remain in this heading.
- (B) Tubes with narrowed ends clearly intended for electric lamps, or bent into shape for advertising signs.
- (C) Tubes lined with a fluorescent substance (e.g., zinc silicate, cadmium borate, calcium tungstate).

By means of a series of operations (including, insertion of filaments or electrodes, exhaustion of the envelope, introduction of one or more rare gases, of mercury, etc., fitting of caps or connectors), these envelopes are made into electric lamps, cathode-ray tubes or the like of Chapter 85.

All the above-mentioned articles may be of ordinary glass, crystal glass or fused quartz.

The heading **does not include**:

- (a) Glass tubes merely cut to length, whether or not the ends have been fire polished or otherwise smoothed, or tubes which have had fluorescent materials (e.g., sodium uranate) added to the glass in the mass (**heading 70.02**).
- (b) Glass bulbs, tubes and envelopes, closed or with fittings, and finished bulbs, tubes and valves (see **headings 85.39, 85.40, 90.22**, etc.).

\* \* \* \*

In HQ 087044, CBP classified glass sleeves for diodes in heading 7011, HTSUS, as glass envelopes for electric lamps, cathode-ray tubes and the like. The requestor claimed classification in heading 8541, HTSUS, as parts of diodes. While we agree with our conclusion in HQ 087044 that the glass sleeves at issue were not classifiable as parts of diodes of heading 8541, we find that the classification in heading 7011, HTSUS, was incorrect. The glass sleeves are properly classified in heading 7002, HTSUS, as unworked glass rods or tubes.

As noted in HQ 087044, Note 1 to Chapter 85 precludes classification of the glass sleeves in heading 8541, HTSUS, if they are described by heading 7011, HTSUS. Therefore, we must first determine if the subject articles are classified in heading 7011, HTSUS, before examining the applicability of heading 8541, HTSUS.

The instant glass “sleeves” are not used “for” electric lamps or cathode-ray tubes. Furthermore, we do not find that diodes are “like” electric lamps or cathode-ray tubes. EN 70.11 provides various examples of products for which the glass tubes, rods, etc. of heading 7011 are used, such as incandescent or vapour discharge lamps, X-ray tubes, radio valves, cathode-ray tubes, rectifier valves or other electronic tubes or valves, infra-red lamps, etc. Diodes are not named in this list, nor are they similar to the products included on this list. In fact, EN 70.11 describes three categories of articles covered by this heading: glass envelopes, including tubes and bulbs, for the manufacture of electric lamps, valves and tubes; tubes with narrowed ends clearly intended for electric lamps, or bent into shape for advertising signs; and tubes lined with a fluorescent substance (e.g., zinc silicate, cadmium borate, calcium tungstate). The instant glass sleeves do not fall into any of the above categories. In light of the above, the glass sleeves are not products of heading 7011, HTSUS. The EN to heading 7011 directs the classification of “Glass tubes merely cut to length” to heading 7002, HTSUS.

As the glass sleeves are not classified in heading 7011, HTSUS, they are not precluded from classification in heading 8541 by application of Note 1 to Chapter 85. However, we note that the EN to heading 7011 directs the classification of “Glass tubes merely cut to length” to heading 7002, HTSUS. If the glass sleeves are classifiable in heading 7002, they are still precluded from classification in heading 8541, HTSUS, by application of Additional U.S. Rule of Interpretation (AUSRI) 1(c), which states that “a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory”.

Heading 7002 provides for unworked balls, rods or tubes of glass. A “tube” is “a hollow elongated cylinder” (<https://www.merriam-webster.com/dictionary/tube>). The instant sleeves, as elongated hollow cylinders, are “tubes” of glass. The EN to heading 70.11 clarifies that “unworked” rods and tubing of heading 7011 are “as obtained direct from the drawing process or merely cut into lengths the ends of which may have been simply smoothed.” The instant tubes have been cut to a precise length but not further processed. Merely having been drawn and cut to a precise size and length does not constitute “working” for the purposes of heading 7002, HTSUS. We note that glass tubes being prepared for use as diode enclosures are frequently “bundled” together—for example, by coating a number of tubes in molten wax in order to form a block of tubes—and subsequently all cut at the same time. As such bundling is merely a step in the cutting process and does not shape or prepare the goods for any particular application, it does not make such enclosures “worked” pursuant to heading 7002, HTSUS.

Because the instant glass sleeves are classified in heading 7002, HTSUS, they cannot be classified in heading 8541, HTSUS. Additional U.S. Rule of Interpretation 1(c) provides that “a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory.” Heading 7002 specifically provides for glass in balls, rods or tubes, unworked. It therefore describes the glass sleeves with



considerable more specificity than a provision for parts of diodes. The glass sleeves are accordingly precluded from classification in heading 8541 by application of Additional U.S. Rule of Interpretation 1(c).<sup>2</sup>

As tubes of glass, the instant glass sleeves are classified under subheading 7002.3, HTSUS. The types of glass utilized in the instant glass sleeves have a coefficient of mean linear thermal expansion of 9.1 and 8.7 at a temperature of 20°C, and  $10^{-6}\text{K}^{-1}$  for a temperature of 300°C. As the linear coefficient of expansion for the glass exceeds  $5 \times 10^{-6}$  per Kelvin within a temperature range of 0°C to 300°C, the instant glass sleeves are classified in subheading 7002.39.00, HTSUS.

**HOLDING:**

The Schott glass sleeves are classified in heading 7002, HTSUS, specifically subheading 7002.39.00, HTSUS, which provides for “Glass in balls (other than microspheres) of Heading 7018; rods or tubes, unworked: Tubes: Other.” The 2017 column one, general rate of duty is 6% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

HQ 087044, dated May 21, 1990, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF ONE RULING LETTER,  
MODIFICATION OF ONE RULING LETTER, AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF MONEY BELTS**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security

**ACTION:** Notice of proposed revocation of one ruling letter, modification of one ruling letter, and revocation of treatment relating to the tariff classification of money belts

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends

<sup>2</sup> We note that Additional U.S. Rule 1(c) applies only in the absence of “special language or context which otherwise requires.” In prior rulings, CBP has deemed Note 2 to Section XVI to constitute such language. However, such special language or context only precludes the application of Additional U.S. Rule 1(c), HTSUS, where the competing provisions at issue are both within the same section or Chapter. *See e.g.*, HQ 967233, dated February 18, 2005; HQH017185, dated April 17, 2008. Because headings 7002 and 8541 are in different Sections, Note 2 to Section XVI is not “special language or context” precluding the application of Additional U.S. Rule 1(c).

to revoke NY 868779 and to modify NY 871870, concerning the tariff classification of textile money belts under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325-0024.

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter and to modify one ruling letter pertaining to the tariff classification of textile money belts. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) 868779, dated November 25, 1991 (Attachment A), and to NY 871870, dated March 19, 1992 (Attachment B), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY 868779 and NY 871870, CBP classified two textile money belts in heading 4202 of the Harmonized Tariff Schedule of the United States (HTSUS), specifically in subheading 4202.32.95, HTSUS, as articles of a kind normally carried in the pocket or in the handbag, with an outer surface of textile materials. CBP has reviewed NY 868779 and NY 871870 and has determined the ruling letters to be in error. It is now CBP’s position that the subject money belts are properly classified in heading 4202, HTSUS, specifically in subheadings 4202.92.15 and 4202.92.31, HTSUS, as travel, sports and similar bags, with an outer surface of textile materials.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY 868779, modify NY 871870, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H257531, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: October 13, 2017

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

NY 868779  
November 25, 1991  
CLA-2-42:S:N:N3G:341 868779  
CATEGORY: Classification  
TARIFF NO.: 4202.32.9550

Ms. LESLIE GOUKER  
WESTERN OVERSEAS CORPORATION  
CORPORATE HEADQUARTERS  
1855 CORONADO AVENUE  
LONG BEACH, CA 90804

RE: The tariff classification of a money belt from Taiwan.

DEAR Ms GOUKER:

In your letter dated November 7, 1991, on behalf of Packaged Paper Products, you requested a tariff classification ruling.

The submitted sample is a money belt constructed of 60% polyester/40% cotton fibers. It is flat in design, unlined, measures approximately 17 1/2" x 4 3/4" and is designed to be worn around the waist. It has two zippered storage pockets, one larger than the other designed to contain money. The zipper closure is concealed by means of a textile flap.

The applicable subheading for the money belt of textile man-made materials will be 4202.32.9550, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of textile materials, other, of man-made fibers. The duty rate will be 20 percent ad valorem.

Items classifiable under 4202.32.9550 fall within textile category designation 670. Based upon international textile trade agreements, products of Taiwan are subject to visa requirements and quota restraints.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

*Sincerely,*  
JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

[ATTACHMENT B]

NY 871870

March 19, 1992

CLA-2-42:S:N:N3G:341 871870

CATEGORY: Classification

TARIFF NO.: 4202.31.6000; 4202.32.4000

MR. VAHAN CHERTAVIAN  
ARJAN USA, LTD.  
1616 WICOMICO LN.  
VIRGINIA BEACH, VA 23464

RE: The tariff classification of a wallet and a money belt from China.

DEAR MR. CHERTAVIAN:

In your letter dated February 20, 1992, you requested a tariff classification ruling on a wallet and a money belt.

You have submitted two samples with your request, identified as items A and B.

Item A, described as a "Hip-Hugger", is a 100% leather security wallet designed with an attached loop to be secured onto one's belt. Once secured the wallet is worn inside trousers or skirts. The item is flat in design and features a zippered compartment on each side with six inner pockets designed to contain credit cards etc.. It measures approximately 8 inches by 4 1/2 inches.

Item B, described as a "Cache", is a money belt constructed of 100% cotton designed to be worn on the person. The item is flat in design, unlined, and measures approximately 16 inches by 4 1/2 inches designed to be worn around the waist underneath the clothing. It has a zippered compartment with two internal pockets. The zipper closure is concealed by means of a textile flap.

The applicable subheading for Item A, the "Hip-Hugger" security wallet of 100% leather, will be 4202.31.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of leather, other. The duty rate will be 8 percent ad valorem.

The applicable subheading for Item B, the "Cache" money belt of 100% cotton, will be 4202.32.4000, HTS, which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of textile materials, of vegetable fibers and not of pile or tufted construction, of cotton. The duty rate will be 7.2 percent ad valorem.

Items classifiable under 4202.32.4000 fall within textile category designation 369. Based upon international textile trade agreements, products of China are subject to visa requirements and quota restraints.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

## [ATTACHMENT C]

HQ H257531  
CLA-2 OT:RR:CTF:CPM H257531 CkG  
CATEGORY: Classification  
TARIFF NO: 4202.92.31

MICHAEL DUGAN  
WESTERN OVERSEAS CORPORATION  
CORPORATE HEADQUARTERS  
10731 WALKER STREET  
CYPRESS, CA 90630-475

RE: Revocation of NY 868779 and Modification of NY 871870; classification of money belts

DEAR MR. DUGAN:

This letter is in regards to New York Ruling Letter (NY) 868779, dated November 25, 1991, issued to Western Overseas Corporation on behalf of Packaged Paper Products. In NY 868779, CBP classified a textile money belt in subheading 4202.32.95 of the Harmonized Tariff Schedule of the United States (HTSUS), as articles of a kind normally carried in the pocket or in the handbag, with an outer surface of textile materials. We have also identified NY 871870, dated March 19, 1992, which classified a similar “Cache” money belt in subheading 4202.32.40, HTSUS. We have reconsidered these decisions, and for the reasons set forth below, have determined that the money belts are correctly classified in subheading 4202.92.31, HTSUS.

**FACTS:**

The subject merchandise is described in NY 868779 as follows:

The submitted sample is a money belt constructed of 60% polyester/40% cotton fibers. It is flat in design, unlined, measures approximately 17 1/2” x 4 3/4” and is designed to be worn around the waist. It has two zippered storage pockets, one larger than the other designed to contain money. The zipper closure is concealed by means of a textile flap.

The money belt at issue in NY 871870 is described as follows:

Item B, described as a “Cache”, is a money belt constructed of 100% cotton designed to be worn on the person. The item is flat in design, unlined, and measures approximately 16 inches by 4 1/2 inches designed to be worn around the waist underneath the clothing. It has a zippered compartment with two internal pockets. The zipper closure is concealed by means of a textile flap.

**ISSUE:**

Whether the money belts are classified in subheading 4202.32, HTSUS, as articles of a kind normally carried in the pocket or a handbag, or in subheading 4202.92, HTSUS, as travel, sport or similar bags.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on



the basis of GRI 1, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The HTSUS provisions under consideration are as follows:

4202: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

Other:

4202.92: With outer surface of sheeting of plastics or of textile materials:

Travel, sports and similar bags:

With outer surface of textile materials:

Of vegetable fibers and not of pile or tufted construction:

4202.92.15: Of cotton...

4202.92.31: Of man-made fibers...

\* \* \* \*

Heading 4202, HTSUSA, provides for various types of bags or containers. These bags and containers are broken up into four types, at the five-digit subheading level (4202.1, 4202.2, 4202.3, and 4202.9): “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers”; “[h]andbags, whether or not with shoulder strap, including those without handle”; “[a]rticles of a kind normally carried in the pocket or in the handbag; and “[o]ther”.

In NY 868779 and 871870, CBP concluded that money belts, measuring 17.5 inches by 4.75 inches and 16 inches by 4.5 inches, respectively, were “of a kind” normally carried in the pocket or a handbag. This conclusion was incorrect. These money belts are not designed to be carried inside any other bag or container; they are designed to fasten around the waist precisely so that they can be transported by themselves, without the need for any other kind of container. Placing either money belt inside a pocket or handbag would defeat the entire purpose of the article, which is to provide secure, easy and unobstructed access to money and other small valuables. Taking the money belt out of the pocket or purse in order to remove the valuables stored within would be an extra, unnecessary step. Additionally, at a width of 17 and 16 inches, both money belts are too large to fit inside most handbags and pockets.

The instant money belts also do not fall under subheading 4202.1 as a trunk, suitcase, briefcase or similar container, or in subheading 4202.2 as a handbag. We note first that the money belts are smaller and less durable than a trunk, suitcase, or any of the other named items of that type. The articles of subheading 4202.1 are designed to carry clothes, laptops, paper files, textbooks and other such items that clearly unsuited for carrying in the money belt. A money belt is also unlike a handbag or purse in that it is

designed to be principally worn about the waist like a belt, while purses and handbags are carried in the hand or on the shoulder.

As the money belts do not fall under 4202.1, 4202.2 or 4202.3, they fall under 4202.9 “Other”. Under the “Other” provision, 4202.91 provides for articles with an outer surface of leather or of composition leather, and 4202.92 provides for articles “with outer surface of plastic sheeting or of textile materials.” The money belt at issue in NY 868779 is made of polyester and cotton; the “Cache” money belt at issue in NY 871870 is made of 100% cotton. Both articles therefore fall under subheading 4202.92. Subheading 4202.92 is further divided into provisions for travel, sports and similar bags, musical instrument cases, and other. A money belt is designed to be worn around the waist while the wearer is traveling, sightseeing, engaged in a sporting activity, or similar activities where quick and convenient but also secure access to money and other small belongings may be necessary. As they are primarily used during travel and for sports, we find that the money belts fall under the category of travel, sports and similar bags.

Additionally, we note that CBP has consistently classified similar articles such as fanny packs and other waist bags or pouches in subheading 4202.92, as travel, sports and similar bags. *See e.g.*, Headquarters Ruling Letter (HQ) 083800, dated June 13, 1989; HQ 957674, dated October 25, 1995; HQ 963567, dated September 18, 2001; NY N261077, dated February 13, 2015; NY N260055, dated January 9, 2015; NY N237379, dated February 8, 2013; NY K81270, dated December 3, 2003; NY I82783, dated June 6, 2002; NY 818841, dated February 27, 1996.

The provision for travel, sports and similar bags under subheading 4202.92 is further subdivided between travel, sports and similar bags of vegetable fibers and those of man-made materials. The “Cache” money belt is made of 100% cotton and is therefore classified in subheading 4202.92.15, HTSUS, as a travel, sports or similar bag, of cotton. The money belt at issue in NY 868779, however, is a composite article of cotton and polyester. At GRI 1, it is therefore not classifiable as either an article of cotton or an article of man-made fibers. We must therefore turn to the remaining GRIs. GRI2 provides that unfinished articles, as well as mixtures and combinations, are to be classified pursuant to GRI3. GRI3(a) states that when merchandise is classifiable under more than one heading, the merchandise should be classified in the most specific heading. However, GRI3(a) further states that “when two or more headings each refer to . . . part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods.” GRI 3(b), in turn, states in relevant part that composite goods consisting of different materials or made up of different components which cannot be classified by reference to GRI 3(a), are to be classified as if they consisted of the material or component which gives them their essential character.

Subheadings 4202.92.15 and 4202.92.31 each describe only part of the instant money belt; therefore, neither subheading is more specific for the purposes of GRI 3(a). We thus turn to GRI 3(b). Explanatory Note VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” In the instant case, we find that as the polyester makes up the bulk of the article,

the money belt is classified at GRI 3 in subheading 4202.92.31, HTSUS, as a travel, sports or similar bag with an outer surface of man-made fibers.

**HOLDING:**

By application of GRIs 1 and 6, the “Cache” money belt at issue in in NY 871870 is classified in heading 4202, HTSUS, specifically subheading 4202.92.15, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Of vegetable fibers and not of pile or tufted construction: Of cotton.” The 2017 column one, general rate of duty is 6.3% ad valorem.

By application of GRIs 1, 3 and 6, the money belt at issue in NY 868779 is classified in heading 4202, HTSUS, specifically subheading 4202.92.31, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Of man-made fibers.” The 2017 column one, general rate of duty is 17.6%.

**EFFECT ON OTHER RULINGS:**

NY868779, dated November 25, 1991, is hereby revoked. NY 871870, dated March 19, 1992, is hereby modified with respect to the “Cache” money belt.

*Sincerely,*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF DECORATIVE QUARTZ  
ROCKS**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security

**ACTION:** Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of decorative quartz rocks

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke New York Ruling Letter (NY) M86055, dated August 21, 2006, concerning the tariff classification of decorative quartz rocks under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade commu-

nity's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of decorative quartz rocks. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") M86055, dated August 21, 2006 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY M86055, CBP classified decorative quartz rocks in heading 7103, HTSUS, which provides for "Precious stones (other than diamonds) and semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semiprecious stones, temporarily strung for convenience of transport." CBP has reviewed NY M86055 and has determined the ruling letter to be in error. It is now CBP's position that the decorative quartz rocks are properly classified, by operation of GRI 1, in heading 6815, HTSUS, specifically in in subheading 6815.99.4070, HTSUSA, which provides for "Articles of stone or of other mineral

substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY M86055 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H256434, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: October 13, 2017

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

NY M86055

August 21, 2006

CLA-2-71:RR:NC:SP:233 M86055

CATEGORY: Classification

TARIFF NO.: 7103.99.5000

MS. YOLANDA MASSEY  
MICHAELS STORES PROCUREMENT COMPANY, INC.  
8000 BENT BRANCH DRIVE  
IRVING, TX 75063

RE: The tariff classification of decorative river rocks from China.

DEAR MS. MASSEY:

In your letter dated August 14, 2006, you requested a tariff classification ruling.

The submitted sample consists of 28 ounces of decorative natural river rocks made of quartz that have been tumbled and dyed powder blue, packed in a plastic net sack. The rocks are for use in floral arrangements, candle displays, fountains and aquariums.

The applicable subheading for the decorative river rocks will be 7103.99.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport: Otherwise worked: Other: Other." The rate of duty will be 10.5% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

[ATTACHMENT B]

HQ H256434  
CLA-2 OT:RR:CTF:CPM H256434 CkG  
CATEGORY: Classification  
TARIFF NO: 6815.99.4070

Ms. YOLANDA MASSEY  
MICHAELS STORES PROCUREMENT COMPANY, INC.  
8000 BENT BRANCH DRIVE  
IRVING, TX 75063

RE: Revocation of NY M86055; classification of decorative quartz rocks

DEAR Ms. MASSEY:

This letter is in regards to New York Ruling Letter (NY) M86055, issued to Michaels Stores Procurement Company, Inc. on August 21, 2006. In NY M86055, CBP classified decorative quartz river rocks in heading 7103 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Precious stones (other than diamonds) and semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semiprecious stones, temporarily strung for convenience of transport.” We have reconsidered this decision, and for the reasons set forth below, we have determined that the quartz rocks are correctly classified in heading 6815, HTSUS.

**FACTS:**

The subject merchandise was described in NY M86055 as follows:

The submitted sample consists of 28 ounces of decorative natural river rocks made of quartz that have been tumbled and dyed powder blue, packed in a plastic net sack. The rocks are for use in floral arrangements, candle displays, fountains and aquariums.

**ISSUE:**

Whether the instant quartz rocks are classified in heading 2506, HTSUS, as quartz; in heading 6802, HTSUS, as worked monumental or building stone, mosaic cubes, or artificially colored granules, chippings and powder; in heading 6815, HTSUS, as other articles of stone or of other mineral substances; or in heading 7103, HTSUS, as precious or semiprecious stones.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The HTSUS provisions under consideration are as follows:

- 2506: Quartz (other than natural sands); quartzite, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape:



- 6802: Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate):
- 6815: Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included:
- 7103: Precious stones (other than diamonds) and semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semiprecious stones, temporarily strung for convenience of transport:

\* \* \* \*

Note 1 to Chapter 25 provides as follows:

1. Except where their context or note 4 to this chapter otherwise requires, the headings of this chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

\* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General Explanatory Note to Chapter 25 provides as follows:

As provided in Note1, this Chapter covers, except where the context otherwise requires, mineral products **only** in the crude state or washed (including washing with chemical substances to eliminate impurities provided that the structure of the product itself is not changed), crushed, ground, powdered, levigated, sifted, screened or concentrated by flotation, magnetic separation or other mechanical or physical processes (not including crystallisation). The products of this Chapter may also be heated to remove moisture or impurities or for other purposes, provided that the heat treatment does not modify their chemical or crystalline structures. However, other heat treatments (e.g., roasting, fusion or calcination) are not allowed, unless specifically permitted by the heading text. Thus, for example, heat treatment which could entail a change in chemical or crystalline structure is allowed for products of headings 25.13 and 25.17, because the texts of these headings explicitly refer to heat treatment.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use. Minerals which have

been **otherwise** processed (e.g., purified by re-crystallisation, obtained by mixing minerals falling in the same or different headings of this Chapter, made up into articles by shaping, carving, etc.) **generally fall in later Chapters** (for example, **Chapter 28** or **68**).

In certain cases, however, the headings:

- (1) Refer to goods which by their nature must have been subjected to a process not provided for by Note 1 to this Chapter. Examples include pure sodium chloride (heading 25.01), certain forms of refined sulphur (heading 25.03), chamotte earth (heading 25.08), plasters (heading 25.20), quicklime (heading 25.22) and hydraulic cements (heading 25.23).
- (2) Specify conditions or processes which are admissible in those cases in addition to those allowed generally under Note 1 to this Chapter. For example, witherite (heading 25.11), siliceous fossil meals and similar siliceous earths (heading 25.12) and dolomite (heading 25.18) may be calcined; magnesite and magnesia (heading 25.19) may be fused or calcined (dead-burned (sintered) or caustic-burned). In the case of dead-burned (sintered) magnesia, other oxides (e.g., iron oxide, chromium oxide) may have been added to facilitate sintering. Similarly the materials of headings 25.06, 25.14, 25.15, 25.16, 25.18 and 25.26 may be roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.

When products are classifiable in heading 25.17 and any other heading of this Chapter, they are to be classified in heading 25.17.

The Chapter **excludes** precious or semi-precious stones of **Chapter 71**.

The Explanatory Note to heading 2506 provides as follows:

**Quartz** is the naturally occurring crystal form of silica.

It falls in this heading **only** if complying with both of the following two conditions:

- (a) It must be in the crude state or have not undergone any process beyond that allowed in Note 1 to this Chapter; for this purpose, heat treatment designed solely to facilitate crushing is regarded as a process permitted by Chapter Note 1.
- (b) It must **not** be of a variety and quality suitable for the manufacture of gem-stones (e.g., rock crystal and smoky quartz, amethyst and rose quartz). Such quartz is **excluded (heading 71.03)**, even if intended to be used for technical purposes, e.g., as piezo-electric quartz or for the manufacture of parts of tools.

EN 68.02 provides, in pertinent part, as follows:

This heading covers natural monumental or building stone (**except** slate) which has been worked **beyond** the stage of the normal quarry products of Chapter 25.

....

The heading therefore covers stone which has been **further processed** than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces).

The heading thus covers stone in the forms produced by the stone-mason, sculptor, etc., viz.:

...

(B) Stone of any shape (including blocks, slabs or sheets), whether or not in the form of finished articles, which has been bossed (i.e., stone which has been given a “rock faced” finish by smoothing along the edges while leaving rough protuberant faces), dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamented, carved, etc.

...

Articles of worked monumental or building stone are usually obtained from the stones of heading 25.15 or 25.16, but may also be obtained from any other natural stone **except** slate (e.g., quartzite, dolomite, flint, steatite)

EN 71.03 provides, in pertinent part, as follows:

Because of their colour, brilliance, resistance to deterioration, and often also because of their rarity, these stones, which are usually crystalline, are used by jewellers, goldsmiths and silversmiths for making articles of adornment or ornamentation. Some are also used in clocks and watches or in tools or, because of their hardness or other special properties, for other industrial purposes (e.g., ruby, sapphire, agate, piezo-electric quartz).

The provisions of the second paragraph of the Explanatory Note to heading 71.02 apply, *mutatis mutandis*, to this heading.

The stones of this heading are therefore mainly stones intended for mounting or setting in jewellery or goldsmiths’ or silversmiths’ wares; but, **provided they are unmounted**, the heading also covers stones for setting in tools of headings 82.01 to 82.06 or in machinery, etc., of Section XVI (e.g., piezo-electric quartz for high frequency apparatus, etc.).

...

The heading includes the precious or semi-precious stones listed in the Annex to this Chapter, the name of the mineralogical species being given with the commercial names; the heading is, of course, **restricted** to those stones and varieties of a quality suitable for use in jewellery, etc.

This heading also **excludes**:

(a) Certain stones which, although belonging to the mineral species cited above, are of non-precious varieties, or of a quality not suitable for use in jewellery, goldsmiths’ or silversmiths’ wares; such stones are classified in **Chapter 25, 26 or 68**.

\* \* \* \*

In NY M86055, CBP classified various tumbled and dyed quartz rocks in heading 7103, HTSUS, which provides for precious or semiprecious stones,

whether or not worked or graded. The mineralogical names of the precious and semi-precious stones covered by heading 7103 are listed in the Annex to Chapter 71 of the HTSUS, which includes the following varieties of quartz: Quartz Agate, Fire Agate, Onyx, Sardonyx, Amethyst, Aventurine, Blue Quartz, Chalcedony, Chrysoprase, Citrine, Yellow Quartz, Cornelian, Green Quartz, Prasiollite, Heliotrope, Bloodstone, Jasper, Silex, Morion, Cairngorm, Moss-Agate, Agate Dendritic, Banded Agate, Prase, Quartz Cat's-eye, Quartz Falcon's-eye, Quartz Tiger's-eye, Rock Crystal, Quartz, Rose-Quartz, Smoky Quartz, and Violet Quartz.

There is no indication that the instant quartz rocks pertain to any of the types listed in the Annex. Moreover, the Explanatory Note to heading 71.03 clearly indicates that precious or semiprecious stones of this heading are used either for mounting into articles of jewelry, in watches or clocks, or for certain industrial tools. Excluded from this heading are stones which, even if of a mineral species which can be considered precious or semiprecious, are not of a quality suitable for use in jewelry; such stones are classified in Chapter 68.

Although the instant rocks are quartz, they are not used in either jewelry or in clocks or industrial tools. Furthermore, they are not of a quality suitable for use in such applications; that they are dyed to give them the appearance of a precious or semiprecious stone clearly indicates that they are not of sufficient quality to be considered as such even when worked and polished. Consequently, the instant quartz rocks are excluded from classification in heading 7103, HTSUS.

Depending on whether or not the instant quartz stones are "worked" beyond the level specified in Note 1 to Chapter 25, they may be classified in either Chapter 25 or Chapter 68. Unworked quartz is classified in heading 2506, HTSUS. Pursuant to Note 1 to Chapter 25 as well as the text of heading 2506, such stone is considered "worked" beyond the scope of Chapter 25 if it has been processed in a manner other than crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes, trimmed or cut into blocks or slabs of a rectangular (including square) shape. Here, the stones have been tumbled in a tumbling machine. Tumbling is a technique for smoothing and polishing a rough surface on a stone. Neither tumbling nor polishing are listed as acceptable processes in Note 1 to Chapter 25 or the text of heading 2506.

No explanation is provided in the HTSUS or in EN 25.06 of what "other mechanical or physical processes" (as mentioned in Note 1 to Chapter 25) are permitted; however, the general EN to Chapter 25 indicates that the intent of the exclusionary language is to exclude those products which have been processed into articles by cutting and shaping or by heat treatment. The classification of such articles is directed to later Chapters, such as Chapter 68. Heading 6802, for example, covers natural monumental or building stone which has been worked beyond the stage of the normal quarry products of Chapter 25, including, as discussed in the EN to that heading, "Stone of any shape (including blocks, slabs or sheets), whether or not in the form of finished articles, which has been bossed (i.e., stone which has been given a "rock faced" finish by smoothing along the edges while leaving rough protuberant faces), dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamented, carved, etc." Polishing and dyeing the instant stones have therefore resulted in a product of Chapter 68

“worked” beyond the scope of Chapter 25. *See also* HQ H003883, dated June 07, 2007.

Having determined that neither Chapter 25 nor Chapter 71 is applicable to the instant merchandise, we turn to Chapter 68. In Chapter 68, two provisions are at issue: heading 6802 (monumental or building stone; mosaic cubes and the like, of natural stone; artificially colored granules, chippings and powder, of natural stone) or heading 6815 (other articles of mineral substances). Quartz can be used as a component in construction material, as an ingredient in granite and other building stones, and even directly as a building stone. Here, however, we have rocks composed entirely of quartz; the mineral here is not agglomerated or part of a granite or quartzite building stone. Nor are the instant rocks suitable for use as building stones. The quartz rocks are therefore not monumental or building stone of heading 6802. Further, they are not similar to mosaic cubes, and they are not granules, chippings or powder. Thus, they are not described by heading 6802, HTSUS. The instant river rocks are classified in heading 6815, HTSUS, as other articles of mineral substances.

**HOLDING:**

By application of GRIs 1 and 6, the instant river rocks are classified in heading 6815, HTSUS, specifically in subheading 6815.99.4070, HTSUSA, which provides for “Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other.” The 2017 column one, general rate of duty is Free.

**EFFECT ON OTHER RULINGS:**

NY M86055, dated August 21, 2006, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF JIBBITZ CHARMS**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed modification of one ruling letter, and revocation of treatment relating to the tariff classification of Jibbitz charms.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends

to modify one ruling letter concerning tariff classification of Jibbitz charms under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of Jibbitz charms. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N009740, dated May 8, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N009740, CBP classified Jibbitz charms in heading 3926, HTSUS, specifically in subheading 3926.40.0000, HTSUS, which provides for “other articles of plastics and articles of other materials of headings 3901 to 3914.” CBP has reviewed NY N009740 and has determined the ruling letter to be in error. It is now CBP’s position that Jibbitz charms are properly classified, by operation of GRI 1, in heading 7117, HTSUS, specifically in subheading 7117.90.7500, HTSUS, which provides for “imitation jewelry.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N009740 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H278152, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: October 17, 2017

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments



[ATTACHMENT A]

N009740

May 8, 2007

CLA-2-39:RR:NC:SP:221

CATEGORY: Classification

TARIFF NO.: 3926.40.0000; 7117.90.7500

Ms. ALEXANDRA O'LEARY  
JIBBITZ, LLC  
3052 STERLING CIRCLE  
BOULDER, CO 80301

RE: The tariff classification of plastic bracelets, charms, decorative shoe straps and embellishments from China.

DEAR Ms. O'LEARY:

In your letter dated April 4, 2007, you requested a tariff classification ruling.

Samples were provided with your letter. The strap is composed entirely of silicone plastic. It measures approximately 6 inches in length and 9/16 inch in width and is molded to incorporate 11 holes. The strap is designed to be attached onto a molded plastic shoe as a decorative accessory to the shoe. Jibbitz charms can be inserted into the holes to enhance the decorative effect.

The bracelet is composed of silicone plastic and has metal snap closures. The bracelet is molded to incorporate 10 holes through which Jibbitz charms can be inserted.

The Jibbitz charms consist of three dimensional molded plastic decorative shapes on a short post with a round metal stud on the other end. The charms come in various decorative shapes, such as flowers, sports balls and animals. These charms can be secured to the bracelet straps and shoe straps by pushing the metal studs through the holes.

You have also submitted a package of three dimensional decorative plastic embellishments that are molded in the shape of dinosaurs. The package includes pressure sensitive adhesive tabs so that the embellishments can be secured to various surfaces.

As you requested, the samples will be returned.

You suggest classification as decorative articles of plastics in subheading 3926.40.0000, Harmonized Tariff Schedule of the United States (HTSUS). This office agrees that the strap, charms and embellishments are properly classified as decorative articles of plastics. However, the bracelets are more specifically provided for as imitation jewelry in heading 7117. In addition, Legal Note 2(o) of chapter 39 precludes imitation jewelry of heading 7117 from classification in chapter 39.

The applicable subheading for the decorative shoe straps, for the plastic charms with the metal studs, and for the molded plastic embellishments will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics...statuettes and other ornamental articles. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the plastic bracelets will be 7117.90.7500, HTSUS, which provides for imitation jewelry: other: other: valued over 20 cents per dozen pieces or parts: other: of plastics. The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 646-733-3023.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

[ATTACHMENT B]

HQ H278152  
OT:RR:CTF:CPM H278152 RGR  
CATEGORY: Classification  
TARIFF NO.: 7117.90.7500

Ms. ALEXANDRA O'LEARY  
JIBBITZ, LLC  
3052 STERLING CIRCLE  
BOULDER, CO 80301

RE: Modification of NY N009740; Tariff classification of plastic bracelets, charms, decorative shoe straps and embellishments from China

DEAR Ms. O'LEARY:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling Letter N009740, dated May 8, 2007, regarding the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of Jibbitz charms from China. The Jibbitz charms were classified under subheading 3926.40.00, HTSUS, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles." After reviewing this ruling in its entirety, we believe that it is partially in error. For the reasons set forth below, we hereby modify NY N009740 with respect to the classification of Jibbitz charms. The remaining analysis of NY N009740 remains unchanged.

**FACTS:**

In NY N009740, we described the products as follows:

Jibbitz charms can be inserted into the holes [of a molded plastic shoe, i.e., Crocs] to enhance the decorative effect.

\* \* \*

The Jibbitz charms consist of three dimensional molded plastic decorative shapes on a short post with a round metal stud on the other end. The charms come in various decorative shapes, such as flowers, sports balls and animals. These charms can be secured to the bracelet straps and shoe straps by pushing the metal studs through the holes.

**ISSUE:**

Whether Jibbitz charms are classified under heading 3926, HTSUS, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914" or under heading 7117, HTSUS, as "[i]mitation jewelry"?

**LAW AND ANALYSIS:**

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes..." In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, *54 Fed. Reg. 35127* (August 23, 1989).

The HTSUS headings under consideration are as follows:

- 3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:
- 3926.40.00: Statuettes and other ornamental articles. . .
- \*\*\*
- 7117: Imitation jewelry:
- 7117.90: Other:
- Other:
- Valued over 20 cents per dozen pieces or parts:
- Other:
- 7117.90.75: Of plastics. . .
- \* \* \* \*

Chapter 39, Note 2(r), excludes imitation jewelry from classification in the chapter.

Note 9(a) to Chapter 71 states as follows:

- 9. For the purposes of heading 7113, the expression “*articles of jewelry*” means:
  - (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and

\* \* \* \*

Note 11 to Chapter 71 states as follows:

- 11. For the purposes of heading 7117, the expression “*imitation jewelry*” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

\* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, *54 Fed. Reg. 35127, 35128* (August 23, 1989).

The EN to Heading 71.13 states, in pertinent part:

This heading covers articles of jewellery as defined in Note 9 to this Chapter, wholly or partly or precious metal or metal clad with precious metal, that is:

- (A) Small object of personal adornment (gem-set or not) such as rings, bracelets, necklaces, brooches, ear-rings, neck chains, watch-chains and other ornamental chains; fobs, pendants, tie-pins and clips, cuff-links, dress-studs, buttons, etc.; religious or other cross; medals and insignia; hat ornaments (pins, buckles, rings, etc.); ornaments for handbags; *buckles and slides for belts, shoes, etc.*; hair-slides, tiaras, dress combs and similar hair ornaments.

(emphasis added).

The EN to Heading 71.17 states, in pertinent part:

For the purposes of this heading, the expression imitation jewellery, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc., ...

According to Note 2(r) to Chapter 39 of the HTSUS, a product that is properly classified under heading 7117, HTSUS, is precluded from classification under Chapter 39, HTSUS. Thus, we must first consider whether Jibbitz charms can be classified in heading 7117, HTSUS, as imitation jewelry.

The subject merchandise consists of molded plastic decorative charms known as Jibbitz that come in various shapes, such as flowers, sports balls and animals, and which can be inserted into the holes of Crocs shoes as decorations. Jibbitz, which contain a stud to insert into an article worn on the body, are “*ejusdem generis*” or “of the same kind” of articles as the exemplars in Note 9(a), such as dress studs and tie pins. Additionally, the ENs to heading 71.13 include buckles and slides for ... shoes...,” specifically including ornaments to adorn shoes as jewelry. Hence, Jibbitz, which adorn shoes, do not contain any metal, pearls or stone and are *ejusdem generis* with the exemplars of Note 9(a), are described as imitation jewelry under Note 11 to chapter 71.

Moreover, we have previously classified Jibbitz charms in heading 7117, HTSUS. See, e.g., NY N212139, dated May 1, 2012 (classifying Jibbitz charms in heading 7117, HTSUS). In NY N032345, dated July 15, 2008, we also classified the following merchandise in heading 7117, HTSUS:

Shoe charms for use on sport clogs which feature vent holes or openings around the forefoot. The top portion of the charm is composed of 100% PVC with a decorative label in various shapes. The bottom of the decorative top contains a post which attaches to the shoe by placing the small side of the charm lock on the inside portion of the desired hole and locking it into place.

Though the term “Jibbitz” is not used to identify the merchandise in NY N032345, the description of the merchandise identifies them as Jibbitz (decorative shoe charms for use on sport clogs that feature vent holes (i.e., Crocs) that attach to the shoes by placing the charms in the desired hole and locking into place). There, we also held that the applicable heading for the shoe charms is heading 7117, HTSUS.

In light of the foregoing, we find that the Jibbitz charms at issue are classified in heading 7117, HTSUS, and specifically provided for under subheading 7117.90.75, HTSUS, as “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.”

**HOLDING:**

Pursuant to GRI 1, Jibbitz charms are classified in heading 7117, HTSUS, specifically under subheading 7117.90.75, HTSUS, as “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.” The 2017 column one general rate of duty is “free”.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompany duty rate are provided on the World Wide Web, at <http://www.usitc.gov/tata.hts/>.

**EFFECT ON OTHER RULINGS:**

New York Ruling Letter N009470, dated May 8, 2007, is hereby MODIFIED as set forth above with regard to the classification of Jibbitz charms described therein.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177**

**REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF PARALLEL REACTION  
STATIONS FOR ORGANIC CHEMISTRY**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of parallel reaction stations for organic chemistry.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of parallel reaction stations for organic chemistry under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is

revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 32, on August 9, 2017. CBP received zero comments concerning the proposed revocation.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325-0371.

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 51, No. 32, on August 9, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of parallel reaction stations for organic chemistry. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) I81272, dated Mary 21, 2002, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data-

bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY I81272, CBP classified four parallel reaction stations for organic chemistry in heading 8479, HTSUS, specifically in subheading 8479.82.00, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines." CBP has reviewed NY I81272 and has determined the ruling letter to be in error. It is now CBP's position that the parallel reaction stations for organic chemistry are properly classified, by operation of GRI 1, in heading 8419, HTSUS, specifically in subheading 8419.89.95, HTSUS, which provides for "Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Other machinery, plant or equipment: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking ruling letter NY I81272 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H274139, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.



In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: October 16, 2017

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H274139

October 16, 29017

CLA-2 OT:RR:CTF:TCM H274139 LWF

CATEGORY: Classification

TARIFF NO.: 8419.89.95

MR. ROBERT L. SOZA, JR.  
JACKSON WALKER LLP  
112 EAST PECAN ST., SUITE 2400  
SAN ANTONIO, TX 78205

RE: Revocation of New York Ruling Letter (NY) I81272, dated May 21, 2002; tariff classification of parallel reaction stations for organic chemistry

DEAR MR. SOZA:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I81272, dated May 21, 2002, issued to your client Genevac, Inc. (“Genevac”), concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain parallel reaction stations for organic chemistry. Upon review of the ruling letter, CBP has determined the tariff classification decision set forth in NY I81272 to be in error. Accordingly, for the reasons explained below, CBP is revoking the ruling letter.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 32, on August 9, 2017. No comments were received in response to the notice.

**FACTS:**

The merchandise at issue consists of four machines used in scientific laboratories for the study of organic chemistry for the development of pharmaceutical compounds. Genevac identifies the individual machines as the: (1) “GreenHouse Parallel Synthesiser,” (2) “Carousel Reaction Station,” (3) “Metz Heater Shaker,” and (4) “Metz Syn<sup>10</sup> Reaction Station.” See Figs. 1–4, below.

Collectively, the machines are identified as “parallel reaction stations,” because they are used by organic chemists to conduct simultaneous (“parallel”) chemical reactions via the heating, cooling, and/or stirring or shaking of chemical compounds in reaction tubes within the machines. During chemical synthesis, the reaction tubes are filled with chemical compounds, and a temperature gradient is applied to the contents of the reaction tube to provoke chemical reactions, thereby creating or modifying molecules for further analysis. Common to the design of each of the four parallel reaction stations, the machines are engineered to evenly heat or cool multiple reaction tubes placed into the devices.

In ruling letter NY I81272, CBP classified each of the parallel reaction stations under heading 8479, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof.”



Fig. 1: GreenHouse Parallel Synthesiser



Fig. 2: Carousel Reaction Station



Fig. 3: Metz Heater Shaker



Fig. 4: Metz Syn<sup>10</sup> Reaction Station

### Fig. 1: GreenHouse Parallel Synthesiser

The GreenHouse Parallel Synthesiser holds 24 reaction tubes and allows chemists to perform 24 reactions in parallel, with a reaction volume of 0.5 to 3ml per reaction tube. The base of the machine consists of a magnetic stirring hotplate, upon which is mounted an aluminum base and glass enclosure for 24 reaction tubes. The top of the machine features 24 individual, magnetically-driven vertical stirring elements, a water-cooled aluminum reflux head with nickel condensing fingers to condense reaction vapors, an inlet/outlet for vacuum and inert gasses, and a temperature/time controller. The stirring hotplate is capable of creating a magnetic field that spins the vertical stirring elements at speeds of up to 1,100 RPM, and the machine's heating element (and removable cooling reservoir) allows the GreenHouse Parallel Synthesiser to warm or cool reaction samples between -70°C and 150°C. The aluminum base evenly conducts heat to and away from all reaction tubes, and the machine is capable of controlling temperature uniformity with an accuracy of  $\pm 0.5^\circ\text{C}$ .

**Fig. 2: Carousel Reaction Station**

The Carousel Reaction Station is a machine identified by similar form and function to that of the GreenHouse Parallel Synthesiser. The Carousel Reaction Station is capable of holding 12 reaction tubes.

**Fig. 3: Metz Heater Shaker**

The Metz Heater Shaker is a parallel reaction station that is designed to evenly heat reaction tubes within a range of 5°C and 150°C. Unlike the GreenHouse Parallel Synthesiser, Carousel Reaction Stations, and Metz Syn<sup>10</sup> Reaction Station, the Metz Heater Shaker is not equipped with a stirring mechanism, but instead features a microprocessor-controlled shaking action that is capable of operating between 100 to 600rpm.

**Fig. 4: Metz Syn<sup>10</sup> Reaction Station**

The Metz Syn<sup>10</sup> Reaction Station is a machine identified by similar form and function to that of the GreenHouse Parallel Synthesiser and Carousel Reaction Station. However, unlike the other parallel reaction stations, the design of the Metz Syn<sup>10</sup> Reaction Station allows an operator to apply different temperatures and/or stirring speeds to each of the individual reaction tubes that are placed within the machine.

**ISSUE:**

Whether the parallel reaction stations are classifiable under heading 8419, as laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature, or heading 8479, as machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are generally indicative of the proper interpretation of the heading. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

With respect to the tariff classification of the parallel reactions stations, the relevant HTSUS provisions state, as follows:

- 8419 Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof
- 8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof

\* \* \* \* \*

Note 2 to Chapter 84, HTSUS, states, in relevant part:

2. Subject to the operation of Note 3 to Section XVI and subject to Note 9 to this chapter, a machine or appliance which answers to a description in one or more of the headings 8401 to 8424, or heading 8486 and at the same time to a description in one or more of the headings 8425 to 8480 is to be classified under the appropriate heading of the former group or under heading 8486, as the case may be, and not the latter group.

Heading 8419 does not, however, cover:

[...]

(e) Machinery, plant or laboratory equipment, designed for mechanical operation, in which a change of temperature, even if necessary, is subsidiary.

\* \* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 84.19, HS, provides, in relevant part, as follows:

[T]he heading covers machinery and plant designed to submit materials (solid, liquid or gaseous) to a heating or cooling process in order to cause a simple change of temperature, or to cause a transformation of the materials resulting principally from the temperature change (e.g., heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling processes). But the heading **excludes** machinery and plant in which the heating or cooling, even if essential, is merely a secondary function designed to facilitate the main mechanical function of the machine or plant, e.g., machines for coating biscuits, etc., with chocolate, and conches (**heading 84.38**), washing machines (**heading 84.50 or 84.51**), machines for spreading and tamping bituminous road-surfacing materials (**heading 84.79**).

The machinery and plant classified in this heading may or may not incorporate mechanical equipment.

[...]

**(VII) MACHINERY FOR LIQUEFYING AIR;  
SPECIAL LABORATORY APPARATUS AND EQUIPMENT**

The heading includes **machines of the Linde or Claude type used for the liquefaction of air.**

The heading further includes **pecially designed laboratory apparatus and equipment**, generally small in size (autoclaves, distilling, sterilising or steaming apparatus, dryers, etc.), but it **excludes** demonstrational apparatus of **heading 90.23**, and measuring, checking, etc., apparatus more specifically covered by **Chapter 90**. (Emphasis original.)

\* \* \* \* \*

Heading 8419, HTSUS, provides for “machinery, plant or laboratory equipment... for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, [...] or cooling[.]” However, Note 2(e) to Chapter 84, HTSUS, states that, “the heading excludes machinery, plant or laboratory equipment in which a change of temperature, even if necessary, is subsidiary. *See also* EN 84.19, HS (“But the heading **excludes** machinery and plant in which the heating or cooling, even if essential, is merely a secondary function designed to facilitate the main mechanical function of the machine or plant[.]”). Consequently, while the text of heading 8419, HTSUS, requires only that laboratory equipment of heading involve a change of temperature, Note 2(e) to the Chapter instructs that the heating or cooling function serve as a non-subsidiary purpose of such machines.

CBP has previously examined the classification of laboratory equipment under heading 8419, HTSUS. Specifically, in Headquarters Ruling Letter (HQ) 965366, dated September 24, 2002, CBP classified a polymerase chain reaction (PCR) machine used to duplicate DNA or RNA under heading 8419, HTSUS, because it found that the machine’s ability to heat samples to a precise temperature was of principal importance to the function of the PCR machine. There, the first step of the PCR process involved precisely heating a DNA or RNA sample material to 94–96°C to facilitate the separation of the sample’s helix strands. Absent this temperature change, the remaining steps of the PCR process cannot take place and duplication of the genetic material within the machine would be impossible. CBP therefore determined that the PCR machine’s temperature function resulted in a non-subsidiary treatment of material (i.e. the separation of DNA or RNA helix strands), as described under heading 8419, HTSUS, and Note 2(e) to Chapter 84. The United States Court of International Trade (CIT) affirmed CBP’s conclusions in ruling letter HQ 965366, holding that the treatment of DNA and RNA materials by a change in temperature was central to the function of the PCR machine and that “the specialized nature of the [PCR machine] does not preclude its classification under HTSUS heading 8419.” *Applied Biosystems v. United States*, 34 C.I.T. 769, 777 (Ct. Int’l Trade 2010).<sup>1</sup>

By contrast, where the control of temperature is not essential to the function of laboratory equipment, the CIT has held that such machines fall outside the scope of heading 8419, HTSUS. For example, in *Applikon Biotechnology, Inc. v. United States*, 807 F. Supp. 2d 1323 (Ct. Int’l Trade 2011),

<sup>1</sup> CBP notes that although the CIT in *Applied Biosystems*, 34 C.I.T. 769 (Ct. Int’l Trade 2010), stated that the PCR machine “does not stir” the DNA or RNA sample, the Court did not affirmatively state that the presence of such a stirring function would exclude the machine from heading 8419, HTSUS. *See Applied Biosystems*, 34 C.I.T. 769, 777.

the CIT found that the regulation of temperature was not essential to a machine's primary purpose of growing cells, concluding in alternative that the machine's heating function was "subsidiary to the cell growth function [...] in the same manner that the water heating circuit in a washing machine is subsidiary to its function of cleaning clothes." *Applikon Biotechnology, Inc. v. United States*, 807 F. Supp. 2d 1323, 1331 (classifying under heading 8479, HTSUS, a machine designed to maintain, via a mixing function, an aseptic and homogenous environment in which to culture cells).

Upon consideration of CBP's prior analysis in HQ 965366 and the CIT's guidance concerning the scope of heading 8419, HTSUS, CBP finds that the instant parallel reaction stations feature a non-subsidiary temperature control function that is essential to the overall function of the machines. Specifically, the ability of the machines to precisely and evenly heat or cool chemical compounds is necessary to provoke chemical reactions within the machines' reaction tubes. Without the ability to apply a temperature gradient to the reaction tubes, the machine would not function. Moreover, the facts do not indicate that the stirring or shaking functions of the machines are essential to the parallel reaction stations' primary purpose of synthesizing organic chemical compounds.

Based on the above facts, CBP finds that the parallel reaction stations are fully described by the text of heading 8419, HTSUS, because the heating and cooling functions of the machines are designed to catalyze chemical reactions within the devices' reaction tubes. Similarly, the machines satisfy the requirements of Note 2(e) to Chapter 84, because the temperature functions are necessary to facilitate the overall function of the machines and are not subsidiary to the stirring or shaking capabilities of the devices. CBP therefore concludes that the parallel reaction stations are classifiable under heading 8419, HTSUS, specifically in subheading 8419.89.95, as laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature.

In closing, CBP notes that the Harmonized System Committee (HSC) of the World Customs Organization (WCO) has also examined the tariff classification of a machine similar to the instant parallel reaction stations and concluded that the machine—a "dissolution testing unit" equipped with an electrical coil for the heating and testing of pharmaceutical drugs—was properly classified under subheading 8419.89, HS. See Annex G/2 to Doc. NC1760E1b (HSC/49/March 2012). As stated in T.D. 89-90, CBP accords HSC opinions the same weight as that of Explanatory Notes, i.e., while neither legally dispositive or binding, classification decisions of the HSC are generally indicative of the proper interpretation of HS headings. Accordingly, CBP observes that the conclusions reached in this ruling are consistent with the HSC's classification of the "dissolution testing unit," as reflected in the WCO Compendium of Classification Opinions (C.O.) at C.O. 8419.89/3.

#### **HOLDING:**

By application of GRI 1, the parallel reaction stations are classified under heading 8419, HTSUS. Specifically, they are classifiable in subheading 8419.89.95, HTSUS, which provides for, "Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, va-

porizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Other machinery, plant or equipment: Other: Other.” The 2017 column one, general rate of duty for subheading 8419.89.95, HTSUS, is 4.2% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

In accordance with the analysis set forth above, ruling letter NY I81272, dated May 21, 2002, is hereby **REVOKED**. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177**

**REVOCATION OF THREE RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF VACUUM TRUCKS  
DESIGNED FOR LIQUID AND SEMI-LIQUID WASTE  
REMOVAL**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of revocation of three ruling letters, and revocation of treatment relating to the tariff classification of vacuum trucks designed for liquid and semi-liquid waste removal.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters concerning the tariff classification of vacuum trucks designed for liquid and semi-liquid waste removal under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 33, on August 16, 2017. CBP received zero comments concerning the proposed revocation.



**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325-0371.

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 51, No. 33, on August 16, 2017, proposing to revoke three ruling letters pertaining to the tariff classification of vacuum trucks designed for liquid and semi-liquid waste removal. As stated in the proposed notice, this action will cover Headquarters Ruling Letter (“HQ”) H235508, dated August 27, 2014; New York Ruling Letter (“NY”) N268924, dated October 9, 2015; and HQ 958847, dated June 20, 1996, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or

decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In HQ H235508, NY N268924, and HQ 958847, CBP classified vacuum trucks designed for liquid and semi-liquid waste removal in heading 8704, HTSUS, which provides for "Motor vehicles for the transport of goods." CBP has reviewed HQ H235508, NY N268924, and HQ 958847 and has determined the ruling letters to be in error. It is now CBP's position that the vacuum trucks designed for liquid and semi-liquid waste removal are properly classified, by operation of GRI 1, in heading 8705, HTSUS, specifically in subheading 8705.90.00, HTSUS, which provides for "Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units): Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ H235508, NY N268924, and HQ 958847 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H287200, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: October 16, 2017

GREG CONNOR  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H287200

October 16, 2017

CLA-2 OT:RR:CTF:TCM H287200 LWF

CATEGORY: Classification

TARIFF NO.: 8705.90.00

JOHN F. FARRAHER, JR.  
GREENBERG TRAUIG, LLP  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110

RE: Revocation of Headquarters Ruling Letter (HQ) H235508, dated August 27, 2014, New York Ruling Letter (NY) N268924, dated October 9, 2015, and HQ 958847, dated June 20, 1996; classification of certain vacuum trucks designed for liquid and semi-liquid waste removal

DEAR MR. FARRAHER:

This letter is in reference to Headquarters Ruling Letter (HQ) H235508, issued by U.S. Customs and Border Protection (CBP) in response to a Protest and Application for Further Review (AFR), Protest No. 3304-12-100022, filed on behalf of your client, Clean Harbors Environmental Services, Inc. (“Clean Harbors”), regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain vacuum trucks designed for liquid and semi-liquid waste removal.

In ruling letter HQ H235508, CBP classified vacuum trucks, consisting of a truck cab and chassis equipped with a tank, a rotary vane pump, and suction hoses, under heading 8704, HTSUS, which provides for, “motor vehicles for the transport of goods.” CBP has reviewed ruling letter HQ H235508, and has determined that the classification analysis set forth in the decision is incorrect. Accordingly, for the reasons set forth below, CBP is revoking ruling letter HQ H235508.

Similarly, CBP has reviewed New York Ruling Letter (NY) N268924, dated October 9, 2015, and ruling letter HQ 958847, dated June 20, 1996, both of which concern the classification of vacuum trucks that are substantially similar to the vehicles at issue in ruling letter HQ H235508. Consistent with the below analysis, CBP has determined that ruling letters NY N268924 and HQ 958847 are also incorrect and therefore require revocation.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 33, on August 16, 2017. No comments were received in response to the notice.

**FACTS:**

The vacuum trucks identified in ruling letter HQ H235508 consist of large, specially-designed vehicles that are used for the collection and transport of liquid and semi-solid waste materials. Each truck consists, in relevant part, of a truck cab and chassis equipped with a tank, a rotary vane pump, and suction hoses. During operation, the rotary vane pump is used to generate vacuum pressure inside the vehicle tank, creating a strong vacuum pressure that is suitable for lifting waste material off the ground and into the tank via connected suction hoses.

Due to the extra vacuum pressure produced by the rotary pump, the vacuum truck tank is specially constructed of a thick and heavier steel than the tanks that are used on common tanker trucks. Additionally, the vacuum truck tanks are also constructed with internal baffles that enable the separation of solid waste material from liquid waste, which allows for the separate unloading of solids and liquids. These features enable the vacuum trucks to perform waste clean-up functions, which are typically employed in sewer, septic, environmental, and industrial applications. Similarly, in the petroleum industry, vacuum trucks are often used to remove drilling mud, drilling cuttings, cement, spills, and brine water from production tanks.

In ruling letter NY N268924, CBP provided the following description of the vacuum trucks:

The two (2) items under consideration have been identified as the Foremost FVS1600 and the Tornado which are industrial vacuum loaders. The Gross Vehicle Weight (G.V.W.) of each loader is 62,500 pounds.

Industrial vacuum loaders are designed to collect and remove/transport fluids, sludge slurry and other waste. These trucks are specifically designed to transport wet or dry hazardous and non-hazardous materials. They transport water to the jobsite, where they utilize hoses and other vacuum apparatus to clean and remove debris and other waste from the jobsite. Their design consists of vacuum tanks mounted onto a chassis.

\* \* \* \* \*

In ruling letter HQ 958847, CBP provided the following description of the vacuum trucks:

The [vacuum trucks] are liquid waste removal systems that consist of a vacuum tank with pump mounted on a truck chassis. The trucks are designed to pick up and transport a variety of liquid wastes, slurries, industrial spills and hazardous liquids. The trucks are generally powered by compression-ignition internal combustion (diesel) engines, although, in limited cases, they are powered by spark-ignition internal combustion piston engines.

\* \* \* \* \*

**ISSUE:**

Whether the vacuum trucks are classifiable under heading 8704, HTSUS, as vehicles for the transport of goods, or under heading 8705, HTSUS, as special purpose motor vehicles.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are generally indicative of the proper interpretation of the heading. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

With respect to the tariff classification of the vacuum truck vehicles at issue, the relevant HTSUS provisions state, as follows:

- 8704 Motor vehicles for the transport of goods
- 8705 Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units)

\* \* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTS and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 87.04, HS, provide in relevant part, as follows:

This heading covers in particular:

[...]

[T]ankers (whether or not fitted with pumps);

[...]

[R]efuse collectors whether or not fitted with loading, compressing, damping, etc., devices.

\* \* \* \* \*

The ENs to heading 87.05, HS, provide in relevant part, as follows:

This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to perform certain non-transport functions, i.e., the primary purpose of a vehicle of this heading is not the transport of persons or good.

This heading includes:

[...]

- (4) Lorries (trucks) used for cleansing streets, gutters, airfield runways, etc., (e.g., sweepers, sprinklers, sprinklersweepers and cesspool emptiers).

\* \* \* \* \*

In ruling letter HQ H235508, dated August 27, 2014, CBP examined a Protest/Application for Further Review (“Protest/AFR”) filed by Clean Harbors that argued its vacuum trucks issue were classifiable as special purpose motor vehicles under heading 8705, HTSUS, because the vehicles were used for the collection and removal of wet and dry waste materials from industrial

sites. At the Protest/AFR level, CBP rejected Clean Harbors' claim for classification under heading 8705, HTSUS, and affirmed the Port's classification of the vacuum trucks under heading 8704, HTSUS, as vehicles for the transport of goods.

Specifically, CBP found that the vacuum trucks at issue did not include any special equipment for performing a clean-up function, and notably, lacked additional specialized equipment, such as spray nozzles, spray hoses, or piping with brush attachments that are typical of special purpose vehicles of heading 8705, HTSUS. *See* CBP Ruling Letter HQ H235508, dated August 27, 2014. By contrast, CBP described that the vacuum trucks as "industrial vacuum loaders that collect, remove, and transport fluids, sludge slurry and other waste through suction lines and vacuum hoses so that it may be transported away from the jobsite." *Id.* (Emphasis original.) In light of the identified waste transport function, CBP therefore determined that the vacuum trucks were most-akin to the exemplar, "refuse collectors," found in EN 87.04, HS, and denied Clean Harbors protest by classifying the vehicles under heading 8704, HTSUS.

Upon review of ruling letter HQ H235508, however, this office has re-evaluated CBP's classification of the Clean Harbor vacuum trucks and determined that the vehicles are properly classified under heading 8705, HTSUS, as special purpose motor vehicles, other than those principally designed for the transport of persons or goods. The re-examination has revealed additional information relating to the physical characteristics of the vacuum trucks, which render the vehicles suitable for special purposes beyond the transport of goods. Specifically, the vacuum trucks are equipped with a rotary pump that is designed to enable the vehicles to collect both solid and liquid waste from the ground and industrial waste holding containers. Additionally, due to the strong vacuum pressures generated by the rotary pump, the tanks of the vehicles are constructed and reinforced with thicker, heavier steel than the tanks used on common tankers. The tanks also feature internal baffles that are designed to facilitate the separation of solid waste material from liquid waste. These design characteristics contribute to the special construction of the vacuum trucks, which enable the vehicle to perform the non-transport function of waste collection and clean-up.

This office is careful to acknowledge, however, that the presence of a rotary pump alone is not enough to conclude that the vacuum trucks are specially constructed or equipped to perform a non-transport function. For example, the EN to heading 87.04, HS, specifically identifies "tankers (whether or not fitted with pumps)" as a vehicle of heading 87.04. *See also* EN 87.05, HS (stating that heading 87.05, HS, excludes "self-loading motor vehicles equipped with winches, elevating devices, etc., but which are constructed essentially for the transport of goods."). In this regard, CBP has determined that the presence of rotary pumps on the Clean Harbor vacuum trucks, when combined with the vehicles' other design features, contribute to the non-transport function of waste collection and clean-up. *See* EN 87.05, HS (specifically identifying trucks used for cleansing streets and gutters (for example, sweepers and cesspool emptiers) as performing a non-transport functions). In light of the foregoing, CBP has determined that the vacuum trucks at issue are classifiable in heading 8705, HTSUS, as special purpose motor vehicles.

**HOLDING:**

By application of GRI 1, the vacuum trucks are classified under heading 8705, HTSUS, specifically in subheading 8705.90.00, which provides for “Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units): Other.” The 2017 column one, general rate of duty is *Free*.

Duty rates are provided for you convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the Internet at <http://hts.usitc.gov/>.

**EFFECT ON OTHER RULINGS:**

CBP ruling letters HQ H235508, dated August 27, 2014, NY N268924, dated October 9, 2015, and HQ 958847, dated June 20, 1996, are hereby **REVOKED** in accordance with the above analysis.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**Cc:** Donald S. Stein, Attorney  
Greenberg Traurig, LLP  
2101 L Street, NW, Suite 1000  
Washington, DC 20037-1593

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CONCEALER AND BRONZER  
POWDERS**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of concealer and bronzer powders.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of concealer and bronzer powders under the Harmonized Tariff Schedule of the

United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of concealer and bronzer powders. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") J86656, dated July 24, 2003 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any party who has



received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY J86656, CBP classified concealer and bronzer powders in heading 3304, HTSUS, specifically in subheading 3304.99.50, HTSUS, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other." CBP has reviewed NY J86656 and has determined the ruling letter to be in error. It is now CBP's position that the concealer and bronzer powders are properly classified, in heading 3304, HTSUS, specifically in subheading 3304.91.00, HTSUS, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Powders, whether or not compressed."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY J86656 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H281812, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: November 1, 2017

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY J86656

July 24, 2003

CLA-2-33:RR:NC:2:240 J86656

CATEGORY: Classification

TARIFF NO.: 3304.20.0000; 3304.99.5000

Ms. STACY BAUMAN  
 AMERICAN SHIPPING COMPANY INC.  
 140 SYLVAN AVENUE  
 ENGLEWOOD CLIFFS, NJ 07632

RE: The tariff classification of various bulk cosmetics of US origin processed for retail sale in China

DEAR Ms. BAUMAN:

In your letter dated July 1, 2003 you requested a tariff classification ruling on behalf of your client Topline Products Company.

Bulk cosmetics of US origin are exported to China for retail packing. The bulk cosmetics consist of wet/dry brow powder, concealer powder and bronzer powder. The powders are poured into aluminum pans. Pressure is applied to the pans compressing the powder. The aluminum pans are placed and glued into plastic compacts. The compact is packaged either onto a folding carton or on a blister card. The empty compacts and pans are products of China

Subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS), provides for the free entry of products of the U.S. that are exported and returned without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, provided the documentary requirements of section 10.1, Customs Regulations (19 CFR 10.1) are met. While some change in the condition of the product while it is abroad is permissible, operations, which either advance the value or improve the condition of the exported product render it ineligible for duty free entry upon return to the U.S. In *United States v. John V. Carr & Sons, Inc.*, 69 Cust. Ct. 78, C.D. 4377, 347 F.Supp. 1390 (1972), 61 CCPA 52, C.A.D. 1118, 496 F.2d 1225 (1974), the court stated that absent some alteration or change in the item itself, the mere repackaging of the item, even for the purpose of resale to the ultimate consumer, is not sufficient to preclude the merchandise from being classified under item 800.00, Tariff Schedule of the United States (TSUS) (the precursor to subheading 9801.00.10, HTSUS). The foreign processes at issue in the instant case also exceed mere repackaging. Accordingly, the U.S.-origin eye shadow and facial powder are ineligible for duty-free entry under subheading 9801.00.10, HTSUS, upon its return to the United States.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C.1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article.

Merchandise that is "of foreign origin," i.e., of a country of origin other than that of the U.S., is subject to the requirements of 19 U.S.C. 1304. In *Upjohn Co. v. United States*, 623 F. Supp. 1281 (CIT 1985), the U.S. Court of International Trade stated that:

[e]xported American products retain their identity as American products, provided they are not transformed into new products while abroad.” Customs has ruled that products of the U.S. which are exported for further processing and subsequently returned, are not subject to country of origin marking upon importation to the U.S. unless the further processing in the foreign country constituted a substantial transformation of the product.

A substantial transformation is said to have occurred when an article emerges from a manufacturing process with a name, character, or use that differs from the original material subjected to the process. In determining whether the assembly of parts or materials constitutes a substantial transformation, the issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article.

In this case, bulk cosmetic powder from the United States is sent to China, where it is measured and compressed into individual metal pans, which are placed/glued into a compact. While these operations exceed mere packaging for purposes of subheading 9801.00.10, HTSUS, they do not effect any significant change in the character or use of the cosmetic powder for purposes of establishing country of origin. Therefore, it is our determination that the foreign processes do not constitute a substantial transformation and the cosmetic powders remain products of the United States. Accordingly, the imported cosmetic powders are not subject to the country of origin marking requirements of 19 U.S.C. 1304. If a good is determined to be an article of U.S. origin, it is not subject to the country of origin marking requirements of 19 U.S.C. §1304. Whether an article may be marked with the phrase “Made in the USA” or similar words denoting U.S. origin, is an issue under the authority of the Federal Trade Commission (FTC). We suggest that you contact the FTC Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20508 on the propriety of proposed markings indicating that an article is made in the U.S.

The applicable subheading for the wet/dry brow will be 3304.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations: Eye make-up preparations. The rate of duty will be free.

The applicable subheading for the concealer and bronzer will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations: Other. The rate of duty will be free.

Perfumery, cosmetic and toiletry products are subject to the requirements of the Federal Food, Drug and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at U.S. Food and Drug Administration, Office of Cosmetics and Colors 5100 Paint Branch Parkway, College Park, MD 20740–3835 (202) 418 3412.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 646-733-3268.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H281812  
 OT:RR:CTF:CPM H281812 APP  
 CATEGORY: Classification  
 TARIFF NO.: 3304.91.00

MS. STACY BAUMAN  
 AMERICAN SHIPPING COMPANY, INC.  
 140 SYLVAN AVENUE  
 ENGLEWOOD CLIFFS, NJ 07632

RE: Modification of NY J86656; Tariff classification of concealer and bronzer powders

DEAR Ms. BAUMAN:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) J86656, dated July 24, 2003 (issued to Topline Products Company) regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of concealer and bronzer powders. In NY J86656, CBP classified the concealer and bronzer powders under heading 3304, HTSUS, specifically under subheading 3304.99.50, HTSUS, which provides for “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other.”

We have determined that this ruling is in error. Therefore, for the reasons set forth below we hereby modify NY J86656 with respect to the concealer and bronzer powders.

**FACTS:**

At issue are concealer and bronzer powders, which are applied to the skin to give it color or shine, or to cover spots, blemishes, and dark under-eye circles. The powders are poured into aluminum pans and pressure is applied to the pans compressing the powder. The aluminum pans are then placed and glued into plastic compacts, and packaged onto a folding carton or on a blister card.

**ISSUE:**

Whether the subject concealer and bronzer makeup preparations are classified in subheading 3304.91.00, HTSUS, as “Powders, whether or not compressed” or in subheading, 3304.99.50, HTSUS, as other makeup preparations.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

The HTSUS provisions under consideration in this case are as follows:

3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other:
3304.91.00	Powders, whether or not compressed Other:
3304.99.50	Other

In interpreting the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 33.04(A)(3) states that heading 3304 covers “Other beauty or make-up preparations and preparations for the care of the skin (other than medicaments), such as: **face powders (whether or not compressed)**, baby powders (including talcum powder, not mixed, not perfumed, put up for retail sale), other powders and grease paints.” (emphasis added).

There is no dispute that the subject concealer and bronzer powders are classified as other beauty or makeup preparations and preparations for the care of the skin (other than medicaments) in heading 3304, HTSUS. At issue is the proper subheading. As a result, GRI 6 applies.

In NY A85580, dated August 2, 1996, CBP classified pans containing powdered blush and face powder in subheading 3304.91.00, HTSUS. In NY E83797, dated July 2, 1999, CBP classified a metal pan containing three shades of pressed facial powder for use as a cosmetic foundation in subheading 3304.91.00, HTSUS. In NY N021535, dated January 31, 2008, CBP classified sunscreen face/body powder used as a natural sunscreen in subheading 3304.91.00, HTSUS. Just like the face powders in NY A85580, NY E83797 and NY N021535, the subject concealer and bronzer powders are preparations for the care of the skin applied to the skin to give it color or shine, or to cover spots, blemishes, and dark under-eye circles. Because the instant concealer and bronzer powders are *prima facie* classifiable in subheading 3304.91.00, HTSUS as powders, whether or not compressed, they are not classifiable in subheading 3304.99.50, HTSUS, the basket provision for other than powders.

#### **HOLDING:**

By application of GRIs 1 and 6, the subject concealer and bronzer powders are classified under heading 3304, HTSUS, specifically under subheading 3304.91.00, HTSUS, as “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Powders, whether or not compressed.” The 2017 column one, duty rate is *Free*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at <https://hts.usitc.gov/current>.

**EFFECT ON OTHER RULINGS:**

NY J86656, dated July 24, 2003, is hereby MODIFIED with respect to the concealer and bronzer powders.

*Sincerely,*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation*



**PROPOSED REVOCATION OF SIX RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF METAL STEP STOOLS**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed revocation of six ruling letters, and revocation of treatment relating to the tariff classification of metal step stools.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke six ruling letters concerning tariff classification of metal step stools under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke six ruling letters pertaining to the tariff classification of metal step stools. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") 855972, dated September 12, 1990 (Attachment A), NY R02622, dated October 6, 2005 (Attachment B), NY N022949, dated February 12, 2008 (Attachment C), NY N023940, dated February 29, 2008 (Attachment D), NY N024279, dated March 10, 2008 (Attachment E), and NY N042721, dated October 29, 2008 (Attachment F), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the six rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721, CBP classified the metal step stools in



heading 9403, HTSUS, specifically in subheading 9403.20.00, HTSUS, which provides for “Other furniture and parts thereof: Other metal furniture.” CBP has reviewed NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721, and has determined the ruling letters to be in error. It is now CBP’s position that the metal step stools in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721 are properly classified in heading 7326, HTSUS, specifically in subheading 7326.90.86, HTSUS, which provides for “Other articles of iron or steel: Other: Other: Other: Other.” It is now CBP’s position that the aluminum metal stool in NY N024279 is properly classified in heading 7616, HTSUS, specifically in subheading 7616.99.51, HTSUS, which provides for “Other articles of aluminum: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H202595, set forth as Attachment G to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: November 1, 2017

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY 855972

Sep 12 1990

CLA-2-94:S:N:N1:233 855972

CATEGORY: Classification

TARIFF NO.: 9403.20.00108

MR. MICHAEL O'NEILL  
O'NEILL & WHITAKER, INC.  
1809 BALTIMORE AVENUE  
KANSAS CITY, MO. 64108

RE: The tariff classification of a folding step stool from Taiwan.

DEAR MR. O'NEILL:

In your letter dated August 30, 1990, on behalf of Buliders Square, San Antonio, Texas, you requested a tariff classification ruling.

The furniture item is a folding metal step stool. The main frame is constructed of tubular steel and has non-slip plastic tips. It has two solid steel steps whose height is 10-7/8" to 19-1/2" and folds to 2-1/2". The stool is light weight, easy to carry and can be stored anywhere. The folding step stool is an article of utility that is designed to be placed on the floor or ground. It is typically used in the household for standing, sitting and elevating a person.

The applicable subheading for the metal step stool will be 9403.20.00108, Harmonized Tariff Schedule of the United States (HTS), which provides for other furniture and parts thereof, other metal furniture, household. The rate of duty will be 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

[ATTACHMENT B]

NY R02622

October 6, 2005

CLA-2-94:RR:NC:SP:233 R02622

CATEGORY: Classification

TARIFF NO.: 9403.20.0015

Ms. GERI DAVIDSON  
THE CONTAINER STORE  
500 FREEPORT PARKWAY  
COPPELL, TX 75019

RE: The tariff classification of a step stool from China.

DEAR Ms. DAVIDSON:

In your letter dated September 28, 2005, you requested a tariff classification ruling.

The furniture item is a folding metal step stool. The main frame is constructed of tubular steel and has non-slip plastic tips. The stool is lightweight, easy to carry and can be stored anywhere. The folding step stool is an article of utility that is designed to be placed on the floor or ground. It is typically used in the household for standing, sitting and elevating a person.

The applicable subheading for the step stool will be 9403.20.0015, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other furniture and parts thereof: Other metal furniture, Household: Other." The rate of duty will be Free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

[ATTACHMENT C]

N022949  
February 12, 2008  
CLA-2-94:OT:RR:E:NC:SP:233  
CATEGORY: Classification  
TARIFF NO.: 9403.20.0015

MS. AMY MORGAN  
COSTCO WHOLESALE  
999 LAKE DRIVE  
ISSAQUAH, WA 98027

RE: The tariff classification of a step stool from China.

DEAR MS. MORGAN:

In your letter dated February 6, 2008, you requested a tariff classification ruling.

The furniture item number 722571 is a folding metal step stool. The main frame is constructed of tubular steel and has non-slip plastic tips. The stool is lightweight, easy to carry and can be stored anywhere. The folding step stool is an article of utility that is designed to be placed on the floor or ground. It is typically used in the household for standing, sitting and elevating a person.

The applicable subheading for the step stool will be 9403.20.0015, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other furniture and parts thereof: Other metal furniture, Household: Other." The rate of duty will be Free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

[ATTACHMENT D]

N023940  
February 29, 2008  
CLA-2-94:OT:RR:E:NC:SP:233  
CATEGORY: Classification  
TARIFF NO.: 9403.20.0015

MR. MATTHEW MILES  
DYNASTY INTERNATIONAL  
2441 PRODUCTION DRIVE  
SUITE 100  
INDIANAPOLIS, IN 46241

RE: The tariff classification of step stools from China.

DEAR MR. MILES:

In your letter dated February 26, 2008, on behalf of Dorel Juvenile Group, you requested a tariff classification ruling.

You have submitted descriptive literature on four step stools, models 11-302, 11-303, 11-380 and 11-435. All four are principally made of tubular steel, designed to be placed on the floor and are used in the household for standing, sitting and elevating a person. Model 11-380 differs from the other three as it has a plastic tool rack attached to the top loop.

The applicable subheading for the step stools will be 9403.20.0015, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other metal furniture, Household, Other". The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*  
*National Commodity Specialist Division*

[ATTACHMENT E]

N024279

March 10, 2008

CLA-2-94:OT:RR:E:NC:SP:233

CATEGORY: Classification

TARIFF NO.: 9403.20.0015

MR. MATTHEW MILES  
DYNASTY INTERNATIONAL  
2441 PRODUCTION DRIVE  
SUITE 100  
INDIANAPOLIS, IN 46241

RE: The tariff classification of a step stool from China.

DEAR MR. MILES:

In your letter dated March 5, 2008, on behalf of Dorel Juvenile Group, you requested a tariff classification ruling.

You have submitted a photograph of a step stool, model 11-628 ABL1. It is made of aluminum with the upper step and feet made of plastic. The step stool is lightweight, easy to carry and can be stored anywhere. It is an article of utility that is designed to be placed on the floor or ground. It is used in the household for standing, sitting and elevating a person.

The applicable subheading for the step stool will be 9403.20.0015, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other metal furniture, Household, Other". The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

[ATTACHMENT F]

N042721  
October 29, 2008  
CLA-2-94:OT:RR:E:NC:SP:233  
CATEGORY: Classification  
TARIFF NO.: 9403.20.0015

MR. MATTHEW MILES  
DYNASTY INTERNATIONAL CHB  
2441 PRODUCTION DRIVE  
SUITE 100  
INDIANAPOLIS, IN 46217

RE: The tariff classification of step stools from China.

DEAR MR. MILES:

In your letter dated October 27, 2008, on behalf of Dorel Juvenile Group, you requested a tariff classification ruling.

You have submitted descriptive literature on five step stools, models 11-513, 11-514, 11-515, 11-525 and 11-880. All five are principally made of tubular steel, have three steps, designed to be placed on the floor and are used in the household for standing, sitting and elevating a person. Model numbers 11-515, 11-525 and 11-880 feature plastic trays to hold paint cans or other household articles. These stools are collapsible to facilitate storage.

The applicable subheading for the step stools will be 9403.20.0015, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other metal furniture, Household, Other". The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at (646) 733-3036.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director*

*National Commodity Specialist Division*

## [ATTACHMENT G]

HQ H202595  
 OT:RR:CTF:CPM H202595 Hvb/APP  
 CATEGORY: Classification  
 TARIFF NO.: 7326.90.86; 7616.99.51

MR. MATTHEW MILES  
 DYNASTY INTERNATIONAL CHB  
 2441 PRODUCTION DRIVE  
 SUITE 100  
 INDIANAPOLIS, IN 46241

RE: Tariff classification of metal step stools; Revocation of NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721

DEAR MR. MILES:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) 855972, dated September 12, 1990 (issued to Builders Square); NY R02622, dated October 6, 2005 (issued to The Container Store); NY N022949, dated February 12, 2008 (issued to Costco Wholesale); NY N023940, dated February 29, 2008 (issued to Dorel Juvenile Group); NY N024279, dated March 10, 2008 (issued to Dorel Juvenile Group); and NY N042721, dated October 29, 2008 (issued to Dorel Juvenile Group), regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of metal step stools. CBP classified the subject step stools in heading 9403, HTSUS, specifically in subheading 9403.20.00, HTSUS, which provides for “Other furniture and parts thereof: Other metal furniture.”

We have determined that these six rulings are in error. For the reasons set forth below, we hereby revoke NY 855972, NY R02622, NY N022949, NY N023940, NY N024279, and NY N042721.

**FACTS:**

The subject merchandise consists of metal step stools, which feature two, three, or four steps, covered with plastic ribbed slip-resistant treads to improve a person’s footing when climbing up the ladder. In addition, they feature side-rails to provide stability to a person who is climbing onto the ladder’s uppermost step. All step stools are designed to be placed on the floor or ground, and are used in the household for standing, sitting, and elevating a person.

The folding metal step stool in NY 855972 has two solid steel steps whose height is 10–7/8” to 19–1/2” and folds to 2–1/2”. The main frame is constructed of tubular steel and has non-slip plastic tips. The step stool is light weight, easy to carry, and can be stored anywhere.

The folding metal two-step stool in NY R02622 is made of steel and plastic resin. The main frame is constructed of tubular steel and has non-slip plastic tips. The step stool is lightweight, easy to carry, and can be stored anywhere.

NY N023940 covers step stool models numbers 11–302, 11–303, 11–380, and 11–435. Model number 11–380 differs from the other models in that it has a plastic tool rack attached to the top loop and the top loop of the tubular frame is a foot higher. All models have two plastic steps and the main frame is made of tubular steel. In addition to being used for standing, sitting, and



elevating a person, the step stools are also used for household tasks such as repair, painting, or cleaning of higher places.

The rubbermaid three-step high-back folding steel step stool in NY 022949 is lightweight, easy to carry, and can be stored anywhere. The main frame is constructed of tubular steel and has non-slip plastic tips.

NY N042721 includes five three-step folding stool ladders made of tubular steel (models numbers 11-513, 11-514, 11-515, 11-525, and 11-880). All models are collapsible to facilitate storage. Models numbers 11-515, 11-525, and 11-880 feature plastic trays to hold paint cans or other household articles.

NY N024279 covers model number 11-628 ABL1 (dimensions 39.25" H x 18.75" W x 23.25" D). It is a two-step stool made of aluminum frame with the upper step and feet made of plastic (heavy-duty injecton molded polypropylene resin steps with ribbed slip-resistant treads). The step stool is lightweight, easy to carry, and can be stored anywhere.

**ISSUE:**

Whether the metal step stools are classifiable in heading 9403, HTSUS, as "other furniture and parts thereof" or by their constituent material, in heading 7326, HTSUS, as "other articles of iron or steel", or in heading 7616, HTSUS, as "other articles of aluminum."

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation ("GRIs") and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation ("AUSR"). The GRIs and the AUSR are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

The HTSUS headings under consideration are the following:

- 7326** Other articles of iron or steel:
- 7616** Other articles of aluminum:
- 9403** Other furniture and parts thereof:

Note 1(k) to Section XV (which include Chapter 73), HTSUS states:

- 1. This section does not cover: ...
  - (k) Articles of Chapter 94 (for example, furniture, mattress supports, lamps and lighting fittings, illuminated signs, prefabricated buildings)[.]

Note 2 to Chapter 94, HTSUS states:

The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground[.]

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General ENs to Chapter 94, define furniture as:

(A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport ... Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

(B) The following:

(i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.

(ii) Seats or beds designed to be hung or to be fixed to the wall.

EN 94.03 provides, in pertinent part, as follows:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, tables, telephone stands, writing-desks, escritoirs, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.

The heading includes furnitures for:

- (1) **Private dwellings, hotels, etc.**, such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; stools and foot-stools ... fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys ...
- (2) **Offices**, such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.
- (3) **Schools**, such as: school-desks, lecturers’ desks, easels (for blackboards, etc.).

- (4) **Churches**, such as: altars, confessional boxes, pulpits, communion benches, lecterns, etc.
- (5) **Shops, stores, workshops, etc.**, such as: counters; dress racks; shelving units; compartment or drawer cupboards; cupboards for tools, etc.; special furniture (with cases or drawers) for printing-works.
- (6) **Laboratories or technical offices**, such as: microscope tables; laboratory benches (whether or not with glass cases, gas nozzles and tap fittings, etc.); fume-cupboards; unequipped drawing tables.

The heading **does not include**: ...

- (b) Ladders and steps, trestles, carpenters' benches and the like not having the character of furniture; these are classified according to their constituent material (headings 44.21, 73.26, etc.) ....

The General ENs to Chapter 73 state, in relevant part, that:

This Chapter covers a certain number of specific articles in headings 73.01 to 73.24, and in headings 73.25 and 73.26 a group of articles not specified or included in Chapter 82 or 83 and not falling in other Chapters of the Nomenclature, of iron (including cast iron as defined in Note 1 to this Chapter) or steel.

EN 73.26 provides in pertinent part:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in **Chapter 82** or **83** or more specifically covered elsewhere in the Nomenclature.

The heading includes:

- (1) Horseshoes; ... ladders and steps; trestles ....

EN 76.16 provides in pertinent part:

This heading covers all articles of aluminium **other than** those covered by the preceding headings of this Chapter, or by Note 1 to Section XV, or articles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature ...

This heading includes, in particular:

- (5) Aluminium articles corresponding to the iron and steel articles referred to in the Explanatory Notes to headings 73.25 and 73.26.

\* \* \* \* \*

If the instant step stools are properly classified under heading 9403, HTSUS, they cannot be classified under headings 7326 or 7616, HTSUS. See Note 1(k) to Section XV, HTSUS. Therefore, we must first consider whether the instant step stools are classifiable in heading 9403, HTSUS.

The subject step stools are designed to be placed on the floor or ground, and do not fall under the specified exceptions under Note 2 to Chapter 94, HTSUS. However, not all merchandise designed for placing on the floor or ground automatically qualifies as furniture within the meaning of Chapter 94. Consistent with the General ENs to Chapter 94, to qualify as "furniture," the instant step stools must "have the essential characteristic that they are

constructed for placing on the floor or ground” **and** must be “**used, mainly with a utilitarian purpose, to equip private dwellings ....**” (emphasis added).

EN 94.03 further explains that this heading “includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritoirs, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.” EN 94.03 goes on to list examples of furniture for private dwellings, offices, and so forth. These exemplars are used for storage, for display, or for a person to sit, lie down or rest on.

While the instant step stools are designed to be placed on the ground or floor, and allow the user to safely complete tasks, which require reaching higher elevations in the household, e.g., cabinets, upper shelves, and walls, they are not used to equip private dwellings because they do not allow a person to sit or lie down, or to store or display articles in a permanent fashion. The step stools are not akin to folding chairs. The step stools here do not “furnish” a private dwelling and are not needed for the use of a private dwelling. One might be able to sit on the step stools, but only for a short period of time and not comfortably. The steps are ribbed with plastic treads and the top loop does not provide enough back support. The step stools are foldable and are not designed to rest the feet. In addition, the step stools are not equipped with baskets or any other means to store or display articles in a permanent fashion. Accordingly, the subject stools are not classifiable as “other furniture” in heading 9403, HTSUS, because they do not share characteristics with any of the exemplars in EN 94.03, as they are not intended to be used for rest, relaxation, storage, or display.

Moreover, tools such as ladders and steps are excluded from heading 9403, HTSUS. EN 94.03 explains that “[l]adders and steps[,] and the like, not having the character of furniture” are excluded from heading 9403, HTSUS. The HTSUS and the ENs do not define “ladders” or “steps.” When terms are not defined in the HTSUS or the ENs, they are construed in accordance with their common and commercial meaning. See *Nippon Kogasku (USA) Inc. v. United States*, 69 C.C.P.A. 89, 673 F. 2d 380 (1982); *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F. 2d 1268 (1982). The online Oxford English Dictionary<sup>1</sup> defines “ladder” as “a piece of equipment consisting of a series of bars or steps between two upright lengths of wood, metal, or rope, used for climbing up or down something” and a “step” as “[a] rung of a ladder.”

In this instance, we find that the subject step stools are ladders. Specifically, the subject articles are designed to support the weight of a person, enabling that user to reach higher points, and they feature ladder-like steps that are covered with ribbed plastic to improve the user’s footing and safety. In addition, the subject metal step stools are portable like other household tools, as they are designed to be carried (by their handle), folded, and stored when not in use. They are therefore entirely dissimilar to shelving units CBP has classified as furniture.

The subject articles’ flat surfaces (i.e., the steps) are not suitable for storage or for the display of mementoes, unlike the wooden shelving units with

<sup>1</sup> See Ladder Definition, Online Oxford English Dictionary, <https://en.oxforddictionaries.com/definition/ladder> (last visited Sept. 8, 2017); Step Definition, Online Oxford English Dictionary, <https://en.oxforddictionaries.com/definition/step> (last visited Sept. 8, 2017).

storage baskets classified as “other furniture” in Headquarters Ruling Letter (“HQ”) H240196, dated July 11, 2014.<sup>2</sup> Like the floor standing steel ashtray cylinders and waste receptacles that we classified as household articles in HQ 964352, dated September 11, 2000, the step stools’ intended use is more like that of an appliance, as it allows a person to accomplish household tasks more effectively. Thus, we find that the subject step stools are not classifiable in heading 9403, HTSUS, as “other furniture,” because they are designed to serve as a household tool, or as an appendage or extension of the user, by allowing an individual to expand his or her reach. As a result, they are not excluded from classification in Chapters 73 and 76, HTSUS, by Note 1(k) to Section XV, HTSUS.

The subject steel metal stools in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721 are described by heading 7326, HTSUS, which provides for “Other articles of iron or steel.” EN 73.26 lists ladders as specifically included by heading 7326. *See* NY R01425, dated February 22, 2005 (classifying a two-tier step ladder made of steel in subheading 7326.90, HTSUS). The ENs to heading 7326, state, in relevant part, that this heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating other than articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV, or more specifically covered elsewhere in the Nomenclature. Accordingly, the subject stool steps in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721 are classifiable under heading 7326, HTSUS because they are made of steel and are not covered elsewhere in the Nomenclature.

Finally, the aluminum stool in NY N024279 is described by heading 7616, HTSUS, which covers “Other articles of aluminum.” EN 76.16 explains that heading 7616, HTSUS, includes aluminum articles corresponding to the iron and steel articles referred to in the ENs to headings 73.25 and 73.26 that are not covered by the preceding headings of Chapter 76, by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature. In NY R03154, dated February 3, 2006, CBP classified step ladders made of tubular aluminum in heading 7616, HTSUS. Just like the ladders in NY R03154, the step stool in NY N024279 is classifiable in heading 7616, HTSUS because it is made of aluminum and is not covered elsewhere in the Nomenclature.

#### **HOLDING:**

By application of GRI 1, the step stools in NY 855972, NY R02622, NY N022949, NY N023940, and NY N042721 are classified in heading 7326, HTSUS, specifically under subheading 7326.90.86, HTSUS, which provides for “Other articles of iron or steel: Other: Other: Other: Other.” The 2017 rate of duty is 2.9% *ad valorem*.

By application of GRI 1, the step stool in NY N024279 is classified in heading 7616, HTSUS, specifically under subheading 7616.99.51, HTSUS, which provides for “Other articles of aluminum: Other: Other: Other.” The 2017 rate of duty is 2.5% *ad valorem*.

<sup>2</sup> Three of the step stool models in NY N042721 feature trays to hold paint or tools temporarily while in use, not for display.

Duty rates are provided for convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at <https://hts.usitc.gov/current>.

**EFFECT ON OTHER RULINGS:**

NY 855972, dated September 12, 1990, is hereby REVOKED.  
NY R02622, dated October 6, 2005, is hereby REVOKED.  
NY N022949, dated February 12, 2008, is hereby REVOKED.  
NY N023940, dated February 29, 2008, is hereby REVOKED.  
NY N024279, dated March 10, 2008, is hereby REVOKED.  
NY N042721, dated October 29, 2008, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,


*Director*

*Commercial and Trade Facilitation Division*

Cc: Mr. Michael O'Neill  
O'Neill & Whitaker, Inc.  
1809 Baltimore Avenue  
Kansas City, MO 64108

Ms. Geri Davidson  
The Container Store  
500 Freeport Parkway  
Coppell, TX 75019

Ms. Amy Morgan  
Costco Wholesale  
999 Lake Drive  
Issaquah, WA 98027



**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF YTTRIA STABILIZED  
ZIRCONIUM OXIDE POWDER**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of yttria stabilized zirconium oxide powder.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of yttria stabilized zirconium oxide powder under the Harmonized Tariff

Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of yttria stabilized zirconium oxide powder. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N251680, dated June 23, 2014 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any

party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N251680, CBP classified yttria stabilized zirconium oxide powder in heading 3824, HTSUS, specifically in subheading 3824.90.92, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other." CBP has reviewed NY N251680 and has determined the ruling letter to be in error. It is now CBP's position that yttria stabilized zirconium oxide powder is properly classified, in heading 3824, HTSUS, specifically in subheading 3824.99.39, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Mixtures of two or more inorganic compounds: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N251680 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H282216, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: November 1, 29017

ALLYSON MATTANAH

*For*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments



[ATTACHMENT A]

N251680

June 23, 2014

CLA-2-38:OT:RR:E:NC:N2:239

CATEGORY: Classification

TARIFF NO.: 3824.90.9290

TONY PEDISICH  
WCS INTERNATIONAL  
210 E. SUNRISE HWY., SUITE 203  
VALLEY STREAM, NY 11581

RE: The Tariff Classification of Yttria Stabilized Zirconium Oxide Powder

DEAR MR. PEDISICH:

In your letter dated March 19, 2014, you requested a tariff classification ruling on behalf of your client, Sulzer Metco (US) Inc. The information was submitted to the CBP laboratory for analysis. We apologize for the delay.

The subject merchandise yttria stabilized zirconium oxide powder, is used in high-temperature ceramic applications such as crucibles or furnace linings.

You state that your product should be classified in subheading 2825, which provides for hydrazine and hydroxylamine and their inorganic salts; other inorganic bases; other metal oxides, hydroxides, and peroxides.

Chapter 28, Note 1(a) states, except where the context otherwise requires, the headings of this chapter apply only to: Separate chemical elements and separate chemically defined compounds, whether or not containing impurities. It is our determination that yttria is not an impurity.

The applicable subheading for the yttria stabilized zirconium oxide powder will be 3824.90.9290, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other. The rate of duty will be 5 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patrick Day at [patrick.day@cbp.dhs.gov](mailto:patrick.day@cbp.dhs.gov).

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H282216  
 OT:RR:CTF:CPM H282216 APP  
 CATEGORY: Classification  
 TARIFF NO.: 3824.99.39

MR. CHRISTOPHER CONSTANTINE  
 OERLIKON METCO US, INC.  
 1101 PROSPECT AVENUE  
 WESTBURY, NY 11590

RE: Revocation of NY N251680; Tariff classification of Yttria Stabilized Zirconium Oxide Powder

DEAR MR. CONSTANTINE:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N251680, dated June 23, 2014 (issued to Sulzer Metco (US), Inc.) regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of yttria stabilized zirconium oxide powder. In NY N251680, CBP classified the product under heading 3824, HTSUS, specifically under subheading 3824.90.92, HTSUS (2014), which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.”<sup>1</sup>

We have determined that this ruling is in error. Therefore, for the reasons set forth below we hereby revoke NY N251680.

**FACTS:**

The merchandise at issue in NY N251680 is yttria stabilized zirconium oxide powder used in high-temperature ceramic applications such as crucibles or furnace linings. The Material Safety Data Sheet supplied by the manufacturer states that the yttria stabilized zirconium oxide powder consists of zirconium dioxide (87–91%), Chemical Abstracts Service (“CAS”) No. 1314–23–4; yttrium oxide (7.5–13%), CAS No. 1314–36–9; and hafnium dioxide (0.1–1.8%), CAS No. 12055–23–1. All compounds in this mixture are inorganic.

The CBP Laboratories and Scientific Services (“LSSD”) New York Laboratory examined a sample of yttria stabilized zirconium oxide powder supplied by Sulzer Metco. LSSD Report No. NY20140528, dated May 7, 2014, states the following:

Information from the importer indicates that the sample is a 7–8% yttria stabilized zirconium oxide powder. It is said to have trace amounts of alumina, silica, iron oxide, calcia and magnesia and minor amounts of hafnia. Note: A name ending in the letter A usually indicates the oxide of an element. For example, yttria is yttrium oxide.

Yttrium can be substituted for zirconium in the crystal structure of zirconium oxide. The percentage of yttrium can be varied over a continu-

<sup>1</sup> The current subheading is 3824.99.92, HTSUS (2017), which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other.”

ous range. Yttrium is added so that the zirconium oxide remains in the cubic crystal form. Pure zirconium oxide would exist in a different crystal form and would have different properties. Yttrium does not usually occur in nature along with zirconium.

In our opinion, yttrium cannot be considered an impurity.

**ISSUE:**

Whether the subject yttria stabilized zirconium oxide powder is classified in subheading 3824.99.39, HTSUS, as a mixture of two or more inorganic compounds or in subheading 3824.99.92, HTSUS, as an other chemical preparation.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

The HTSUS provisions under consideration in this case are as follows:

- 3824            Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
  - Other:
- 3824.99            Other:
  - Other:
    - Mixtures of two or more inorganic compounds:
- 3824.99.39            Other
  - Other:
  - Other:
- 3824.99.92            Other

There is no dispute that the yttria stabilized zirconium oxide powder is classified as an other chemical product in subheading 3824.99, HTSUS. At issue is the proper 8-digit tariff rate. As a result, GRI 6 applies.

Subheading 3824.99.39, HTSUS covers mixtures of two or more inorganic compounds. *See* NY N263876, dated April 22, 2015 (classifying two grades of inorganic mixtures under subheading 3824.90.39, HTSUS (2015), which became subheading 3824.99.39 in 2017). Subheading 3824.99.92, HTSUS is a residual provision. *See* Headquarters Ruling Letter (“HQ”) H058796, dated December 7, 2009 (classifying a mixture of halogenated hydrocarbons in subheading 3824.90.92, HTSUS, which is now subheading 3824.99.92, HTSUS, because it could not be classified in the previous subheadings); NY N052735, dated February 26, 2009 (classifying a chemical mixture composed of organic and inorganic compounds and polymers in subheading 3824.90.92,

HTSUS). “Classification of imported merchandise in a basket provision is appropriate only when there is no tariff category that covers the merchandise more specifically.” *Apex Universal, Inc. v. United States*, 22 CIT 465 (1998) (ceramic raised pavement markers were classified under the basket provision for “other ceramic articles” because they did not meet the terms of any of the more specific provisions in Chapter 69, HTSUS). Thus, we first need to determine whether the instant yttria stabilized zirconium oxide powder is specifically covered by subheading 3824.99.39, HTSUS.

The Material Safety Data Sheet supplied by the manufacturer reveals that the instant yttria stabilized zirconium oxide powder consists of zirconium dioxide (87–91%), yttrium oxide (7.5–13%), and hafnium dioxide (0.1–1.8%). According to the CBP LSSD report, the supplied sample was a 7–8% yttria stabilized zirconium oxide powder and contained trace amounts of alumina, silica, iron oxide, calcia and magnesia and minor amounts of hafnia. As in NY N263876, the instant product is a mixture of two or more inorganic compounds and is *prima facie* classifiable in subheading 3824.99.39, HTSUS. Unlike in HQ H058796 and NY N052735, the instant product does not contain any organic compounds or polymers. Because the subject yttria stabilized zirconium oxide powder is specifically covered by subheading 3824.99.39, HTSUS, it is not classifiable as other than mixtures of two or more inorganic compounds under the basket provision in subheading 3824.99.92, HTSUS.

**HOLDING:**

By application of GRIs 1 and 6, the subject yttria stabilized zirconium oxide powder is classified under heading 3824, HTSUS, specifically under subheading 3824.99.39, HTSUS, as “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Mixtures of two or more inorganic compounds: Other.” The 2017 column one, duty rate is *Free*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at <https://hts.usitc.gov/current>.

**EFFECT ON OTHER RULINGS:**

NY N251680, dated June 23, 2014, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF METAL HAIR SNAP CLIPS**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed modification of one ruling letter, and revocation of treatment relating to the tariff classification of metal hair snap clips.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of metal hair snap clips under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before December 27, 2017.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of metal hair snap clips. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N096966, dated April 9, 2010 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N096966, CBP classified metal hair snap clips in heading 9615, HTSUS, specifically in subheading 9615.90.30, HTSUS, which provides for “Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Other: Hair pins.” CBP has reviewed NY N096966 and has determined the ruling letter to be in error. It is now CBP’s position that metal hair snap clips are properly classified, in heading 9615, HTSUS, specifically in subheading 9615.19.60, HTSUS, which provides for “Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N096966 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H284338, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: November 1, 2017

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

April 9, 2010  
CLA-2-61:OT:RR:NC:TA:353  
CATEGORY: Classification

TARIFF NO.: 6117.80.8500, 5609.00.4000, 9615.90.3000

MS. SARAH ALBERTINI-BOND  
DOLLAR TREE STORES  
500 VOLVO PARKWAY  
CHESAPEAKE, VIRGINIA 23462

RE: The tariff classification of headband, ponytail holders and hairclips from China.

Dear Ms. Albertini-Bond:

In your letter dated March 4, 2010, you requested a tariff classification ruling. The samples will be returned to you.

Style SKU 16916A consists of four head wraps and hair clips on a card. One head wrap is 1" wide and made of knit polyester fabric. The other three thin head wraps are made of cordage. Also included on the card are two sets of metal hair clips.

Style SKU 16916B consists of eight pony tail holders and three head wraps made of cordage.

The applicable subheading for the 1" head wrap Style SKU 16916A will be 6117.80.8500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: headbands, ponytail holders and similar articles. The rate of duty will be 14.6 percent ad valorem.

The applicable subheading for the thin head wraps Style 16916A, and the ponytail holders and thin head wraps Style 16916B will be 5609.00.4000, (HTSUS), which provides for "Articles of strip or the like of heading 5404 or 5405....not elsewhere specified or included: Other." The rate of duty will be 3.9 percent ad valorem. The applicable subheading for the metal hair clips, Style 16916A will be 9615.90.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Combs, hair-slides and the like; hair-pins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Other: Hair pins." The rate of duty will be 5.1 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at (646) 733-3053.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist*



[ATTACHMENT B]

HQ H284338  
OT:RR:CTF:CPM H284338 RGR  
CATEGORY: Classification  
TARIFF NO.: 9615.19.6000

Ms. SARAH ALBERTINI-BOND  
DOLLAR TREE STORES  
500 VOLVO PARKWAY  
CHESAPEAKE, VIRGINIA 23462

RE: Modification of NY N096966; Tariff classification of metal hair snap clips from China

DEAR Ms. ALBERTINI-BOND:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling Letter N096966, dated April 9, 2010, regarding the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of metal hair snap clips (“snap clips”) from China. The snap clips, identified in NY N096966 as metal hair clips, were classified under subheading 9615.90.30, HTSUS, as “[c]ombs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Other: Hair pins.” After reviewing this ruling in its entirety, we believe that it is partially in error. For the reasons set forth below, we hereby modify NY N096966 with respect to the classification of snap clips. The remaining analysis of NY N096966 remains unchanged.

**FACTS:**

In NY N096966, we described the products as follows:

Style SKU 16916A consists of four head wraps and hair clips on a card. One head wrap is 1” wide and made of knit polyester fabric. The other three thin head wraps are made of cordage. *Also included on the card are two sets of metal hair clips.*<sup>1</sup>

(Emphasis added). We further note that your ruling request, dated March 4, 2010, regarding the metal hair clips, describes them as “4 snap clips.”

Upon examination of a sample snap clip, we note that it has two prongs, and is shaped like a triangle. The prongs “snap” open and closed when pressure is applied to the middle of the snap clip. When the snap clip is closed, it is used to hold or fasten hair in place for the purpose of securing hair into different hairstyles.

**ISSUE:**

Whether snap clips are classified under subheading 9615.19.60, HTSUS, as “[c]ombs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other” or under subheading 9615.90.30, HTSUS, as “[c]ombs, hair-slides and the like; hairpins, curling

<sup>1</sup> The Ruling also considered the classification of Style SKU 16916B, which consisted of eight pony tail holders and three head wraps made of cordage.

pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Other: Hair pins.”

### LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes...” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The HTSUS subheadings under consideration are as follows:

9615:	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof:
	Combs, hair-slides and the like:
9615.19	Other:
9615.19.60	Other. . .
* * *	
9615.90:	Other:
9615.90.30	Hairpins. . .

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, *54 Fed. Reg. 35127* (August 23, 1989).

Neither the HTSUS nor the ENs provides a definition for “combs”<sup>2</sup> or “hair-slides.” In the absence of a definition of a term in the HTSUS or ENs, the term’s correct meaning is its common and commercial meaning. *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673, F.2d 1268 (1982).

In regards to defining “hair-slides” based on their common or commercial meaning, we turn to the Online Oxford English Dictionary (“OED”) for guidance. The OED uses the definition for “hair” as compounded for the meaning of “hair-slide” and cross referenced to the OED definition of “slide,” at n.6: “a

<sup>2</sup> In NY N137675, dated January 4, 2011, we noted that “the previous tariff schedule (TSUSA) in Subpart A, of Schedule 7, provided ‘the term combs means toothed instruments having not over two rows of teeth, for adjusting, cleaning, or confining hair, or for personal adornment’—see Headquarters Ruling Letter HQ 951234, dated March 11, 1992. Common definitions as found in dictionaries define a ‘comb’ as a toothed instrument used especially for adjusting, cleaning, arranging, or confining hair. . .” As the merchandise at issue does not consist of a toothed instrument, we do not consider whether it is a comb for classification under the HTSUS.

clasp for fastening in the hair.<sup>3</sup> The Merriam-Webster Online Dictionary defines a “hair slide” as “a clip or bar for holding hair in place<sup>4</sup>.” Moreover, in NY N273821, dated April 11, 2016, we noted that there are “no restrictions in the meaning of hair-slide for the types of ornamentation that can be used in the creating or producing of the hair clasp. The only restrictions in heading 9615, HTSUS, is that the hair-slides be of rigid and semi-rigid construction, and not merely of textile fabric. . .”

Turning to the merchandise at issue, the snap clips are similar to hair-slides because they both hold hair in place by means of clips or prongs that open and close. The snap clips are in an “open” position when no pressure is applied and a “closed” position when pressure is applied to the middle of the clip to secure hair in place.<sup>5</sup> As metal snap clips are similar to hair slides, they are described by the terms in subheading 9615.19, HTSUS, and cannot be described as something “other” than similar to hair slides in subheading 9615.90, HTSUS.

Moreover, the Random House Dictionary of the English Language, Unabridged (1973) defines “hair pin” as “1. A slender U-shaped piece of wire, shell, etc., used by women to fasten up the hair or hold a headdress.” In past rulings, we have found that hairpins include merchandise such as bobby pins, which only have one position as part of their mechanism for holding hair in place. *See, e.g.*, Headquarters (“HQ”) Ruling Letter 964802, dated April 5, 2001 (holding that bobby pins are a type of hairpin and are classified in subheading 9615.90.30, HTSUS); NY N016359, dated September 5, 2007 (classifying bobby pins as hairpins in subheading 9615.90.30, HTSUS). The instant merchandise is unlike a hairpin or bobby pin in that it is always in the “closed” position, in which there is constant pressure by one prong against the other. As noted above, the snap clips can be in either an “open” position or a “closed” position.

<sup>3</sup> Online Oxford English Dictionary, <http://www.oed.com/view/Entry/181765#eid22219842> (last visited on October 10, 2017).

<sup>4</sup> Merriam-Webster Online Dictionary, <http://www.m-w.com> (last visited on October 3, 2017).

<sup>5</sup> *See, e.g.*, HQ 960976, dated June 24, 1998 (affirming classification of metal hair “Clippees,” which are described as merchandise identical to snap clips, in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like; other”); NY N006802, dated March 14, 2007 (classifying metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY M86837, dated September 28, 2006 (classifying plastic covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY J81149, dated February 14, 2003 (classifying plastic covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY J84591, dated May 23, 2003 (classifying textile covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY H88428, dated March 12, 2002 (classifying plastic covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY I81213, dated April 30, 2002 (classifying epoxy covered metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY H82312, dated June 14, 2001 (classifying metal snap clip hair ornaments in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY H83200, dated July 12, 2001 (classifying metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY F85715, dated April 11, 2000 (classifying metal hair snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY E86444, dated August 30, 1999 (classifying metal hair snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”); NY E86248, dated August 25, 1999 (classifying metal snap clips in subheading 9615.19.60, HTSUS, as “combs, hair-slides and the like: other”).

**HOLDING:**

Pursuant to GRIs 1 and 6, the snap clips described as “metal hair clips” in NY N096966 are classified in heading 9615, HTSUS, and specifically provided for under subheading 9615.19.6000, HTSUSA (Annotated), as “[c]ombs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Other: Other.” The 2017 column one general rate of duty is 11% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompany duty rate are provided on the World Wide Web, at <http://www.usitc.gov/tata.hts/>.

**EFFECT ON OTHER RULINGS:**

New York Ruling Letter N096966, dated April 9, 2010, is hereby MODIFIED as set forth above with respect to classification of the metal hair clips described therein, but the classification of the knit polyester head wrap, the cordage head wraps and the ponytail holders remains in effect.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Crewman’s Landing Permit**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted (no later than January 16, 2018) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0114 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

- (1) *Email.* Submit comments to: *CBP\_PRA@cbp.dhs.gov*.
- (2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:**

CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

**Overview of This Information Collection**

**Title:** Crewman's Landing Permit.

**OMB Number:** 1651–0114.

**Form Number:** Form I-95.

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Abstract:** CBP Form I-95, *Crewman's Landing Permit*, is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for alien crewmen applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each nonimmigrant alien crewman on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I-95 serves as the physical evidence that an alien crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmen arriving by vessel or air. CBP Form I-95 is authorized by Section 252 of the Immigration and Nationality Act (8 U.S.C. 1282) and is accessible at <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20I-95.pdf>.

**Estimated Number of Respondents:** 433,000.

**Total Number of Estimated Annual Responses:** 433,000.

**Estimated time per Response:** 5 minutes.

**Estimated Total Annual Burden Hours:** 35,939.

Dated: November 8, 2017.

SETH RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, November 15, 2017 (82 FR 52935)]